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(HANSARD)

**Tuesday, December 11, 2007**



THE HONOURABLE NOËL A. KINSELLA  
SPEAKER

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## THE SENATE

Tuesday, December 11, 2007

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### PEACEKEEPING

**Hon. Roméo Antonius Dallaire:** Honourable senators, today we are celebrating the 50th anniversary of Lester B. Pearson's receipt of the Nobel Peace Prize.

This Nobel Prize is the foundation upon which this country's ability to establish and keep peace has been built. The very concept of peacekeeping was developed by Mr. Pearson and General Burns in 1956 in Suez, and it was recognized by the entire world in 1957.

[English]

The concept presented was one of a referee wearing a blue beret and assisting countries in conflict that had finally decided to sign a peace agreement. These countries could look to a neutral force that would permit them to apply the mandates of their peace agreement and ensure its continuance. To that end, we created the chapter six peacekeepers to be referees without a penalty box or a red card who would observe, report and bring the two sides together.

Over the last 50 years, conflicts have evolved from nation against nation to one of state versus state. The responsibility to protect has advanced the previous peacekeeping responsibilities, ultimately, into one of intervention and use of force.

Today, we find ourselves with complex conflicts in which nations are horribly abusing the human rights of their citizens. We have the tool that Lester B. Pearson created, which has been amended and modernized through *Responsibility to Protect* in accordance with Chapter VII of the United Nations Charter to allow peacekeepers to protect and ultimately use force.

Why do we allow the situation in Darfur to exist? Why are we not participating? It is not because the UN has not asked us to. How is it that we are refusing to participate when we founded the very concept of peacekeeping? How is it that we are refusing to participate when we created the concept of protecting human rights? We created the responsibility to protect, we modernized that concept and yet we refuse to participate.

• (1405)

#### INTERNATIONAL HUMAN RIGHTS DAY

**Hon. Donald H. Oliver:** Honourable senators, Monday was International Human Rights Day, a time when we commemorate the adoption and proclamation of the Universal Declaration of

Human Rights by the General Assembly of the United Nations on December 10, 1948.

Consisting of a preamble and 30 articles, the declaration sets out the fundamental rights and freedoms of all people. It prohibits discrimination based on race, colour, sex, language, religion, national or social origin, property, birth, opinion or other status.

The declaration represents an ideal to which all peoples and nations must strive. It also has a strong Canadian connection of which we can all be proud.

The first functional commission established by the United Nations focused on human rights and was chaired by Eleanor Roosevelt, the wife of the former United States President, Franklin Roosevelt. Under her leadership, and assisted by Dr. John Peters Humphrey, a native of New Brunswick, the commission drafted the International Bill of Human Rights, which was to become the declaration we esteem today.

Dr. Humphrey attended Mount Allison University in New Brunswick and McGill University, where he later taught well into his 80s. He promoted human rights in Canada and abroad until his death in 1995.

We have a long way to go to reach the visionary ideal embodied in the declaration. Human rights are under attack or nonexistent in too many parts of the world.

The declaration reminds us that:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

And that it is essential:

If man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Honourable senators, I urge the members of this chamber to uphold the vision laid out by the drafters of the declaration by supporting the equal and inalienable rights of all people and protecting them through the enforcement of the rule of law.

**Hon. Joseph A. Day:** Honourable senators, I would like to follow Senator Oliver's statement and remind all of us that yesterday was International Human Rights Day. It was 59 years ago that the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights and we have celebrated that date, December 10, since that time.

The International Centre for Human Rights and Democratic Development — also known as Rights and Democracy — is a Canadian organization created in 1988 to encourage and support human rights and the promotion of democratic institutions and practices around the world. Every year, they award the

John Humphrey Freedom Award to an organization or individual who has exemplified the spirit of John Peters Humphrey, who, as you have heard, is the Canadian from New Brunswick who drafted the Universal Declaration of Human Rights.

This year's recipient was Akbar Ganji, an Iranian author and promoter of human rights and democracy in his home country. I was pleased to be present when he received the award at a ceremony here last week in Ottawa.

Mr. Ganji was imprisoned in the year 2000 for propaganda against the Iranian regime and its institutions, and subsequently spent six years in Tehran's Evin prison. Throughout his time in prison, Mr. Ganji continued to write pro-democratic works, many of which were smuggled out of prison and published on the Internet. He suffered solitary confinement and torture for those acts, and many of his friends and colleagues were murdered during that time.

Upon his release, he continued to write, producing a series of influential manifestos and open letters calling for Iran's secularization and the establishment of democracy through mass civil disobedience.

As Canadians, we strive to ensure that the fundamental human rights of our citizens are respected. As members of the international community, we present ourselves as an example to the world; and we hope that, by our example, other countries will follow our path. It is unfortunate that many countries today do not, and there is still much suffering around the world due to terrible human rights abuses.

I am humbled by Mr. Ganji's sacrifice and his struggle to bring human rights to all his countrymen. On behalf of my colleagues in the Senate, I am sure we all extend our fervent hope that the attention he has sought will have a positive effect on the advancement of human rights in Iran and beyond.

• (1410)

I should like all honourable senators to know that John Peters Humphrey was born in Hampton, New Brunswick, where he spent his formative years and chose to be buried after a long and distinguished career at McGill Law School and at the United Nations.

Next year will mark the sixtieth anniversary of the signing of the Universal Declaration on Human Rights and a memorial to this event will be unveiled in Hampton. I invite all honourable senators to visit.

[Translation]

## OFFICIAL LANGUAGES

### GOVERNMENT SUPPORT FOR MINORITY FRENCH-LANGUAGE COMMUNITIES

**Hon. Marie-P. Poulin:** Honourable senators, for some time now, the media have been feverishly publishing news of interest to those involved in the official languages file.

On November 20, the Commissioner of Official Languages released a study on bilingualism in Canadian international relations. Earlier this month, the Prime Minister appointed

Bernard Lord to oversee the study of the government's language policies. Mr. Lord's appointment coincided with the publication of 2006 census data, which prompted a statistician in the region to say that it was time for the government to cut the funding that keeps fragile francophone communities in Canada alive.

This sudden deluge of news on official languages shows, once again, that the Official Languages Act has not made it possible for francophones to give up the fight for their language rights. On the contrary, constant vigilance is needed to preserve the health and integrity of the French language in national and international affairs.

As the senator representing Northern Ontario and as a member of the Standing Senate Committee on Official Languages, I want to point out that we are each responsible for promoting the values of linguistic duality entrenched in our Constitution.

### STATISTICS CANADA REPORT ON 2006 CENSUS DATA

**Hon. Rose-Marie Losier-Cool:** Honourable senators, today I would like to draw to your attention the data released last week by Statistics Canada concerning the official languages in Canada.

[English]

These data pleased some, disappointed others and even generated some academic and media coverage most politely described as "questionable."

[Translation]

All we need to know about these data, honourable senators, is that our two official languages, French and English, are still doing well in Canada. However, both official languages have lost some ground since the 2001 census, French a little more so than English, compared to the other languages immigrants bring to Canada.

Even though the percentage of francophones is slowly decreasing compared to the total population of the country, their absolute numbers are going up slightly, largely because some immigrants choose to speak French at home.

[English]

Similarly, although less markedly, the uptake of English as a language spoken at home by immigrants is rising slightly.

One of the most interesting aspects to remember from the 2006 census data is that the number of native English or French speakers in Canada is declining to an extent, but that decline is compensated somewhat by the adoption of English or French as the language spoken at home.

[Translation]

The Cassandras who like to predict the death of francophone communities would be better off spending their time and energy on something more useful to Canadian society. The same goes for francophones who believe that French has no chance for survival

outside Quebec: I offer as proof my friends and colleagues in minority francophone communities in the West, in the territories, in Ontario and in the Maritimes.

Yes, some of our communities are experiencing difficulties, usually because the population base is too small to provide certain services locally or regionally.

However, instead of condemning these communities to certain death by cutting off all funding, we should give them the assistance they need to continue to benefit from their hard-won achievements.

[English]

Honourable senators, francophones comprise nearly one quarter of the Canadian population. That is more than just a marginal minority. Let us remember that francophones account for a great deal of the diversity, vibrancy and openness that makes Canada so attractive to immigrants. Treat us well, and you will preserve the fabric of our country.

• (1415)

#### NATIVE WOMEN'S ASSOCIATION OF CANADA

##### VIOLENCE PREVENTION TOOL KIT

**Hon. Lillian Eva Dyck:** Honourable senators, yesterday I received a violence prevention tool kit that was launched nationally on Monday, December 10 by the President of the Native Women's Association of Canada, Beverley Jacobs, and the national youth representative, Tori-Lynn Wanotch.

The tool kit is designed as an educational resource that will raise awareness across Canada of violence against women, and Aboriginals in particular. I reviewed most of the tool kit this morning, and it is an incredible resource that I highly commend to all honourable senators. I found the tool kit to be extremely informative. It covers areas such as bullying, emotional and psychological violence, sexual assault, and date and relationship violence.

Honourable senators are aware that the level of violence towards women and Aboriginals, and towards Aboriginal women in particular, is high, but this tool kit gives me cause for hope because it has incredibly up-to-date information. It has strategies for the individual on how to prevent violence in the lives of individuals and in communities.

If honourable senators have not received a copy, I suggest they request one from the Native Women's Association of Canada. There is information in the date violence section that is very up to date, including some down-to-earth tips. For example, if one is on a date, one should always carry enough money in one's pocket to be able to take a taxi home if one is in a situation where one feels uncomfortable.

Another practical tip for a woman who suspects that she has been drugged and date raped is that she must submit a urine sample within 12 hours of the alleged assault. That was new information to me.

I highly recommend the tool kit. I certainly suggest that anyone who has contact with young people request a copy from the Native Women's Association of Canada. The tool kit comes with

a CD, handouts and the whole nine yards. As a former professor, I give the tool kit a grade of A-plus. I send my congratulations to the Native Women's Association of Canada and the Native Women's Association youth representative.

[Translation]

## ROUTINE PROCEEDINGS

### COMMISSION OF INQUIRY INTO THE INVESTIGATION OF THE BOMBING OF AIR INDIA FLIGHT 182

#### REPORT TABLED

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the first report of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 entitled *The Families Remember*.

### DIRECTIVE TO THE CANADIAN NUCLEAR SAFETY COMMISSION REGARDING THE HEALTH OF CANADIANS

#### TABLED

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, pursuant to subsection 19(3) of the Nuclear Safety and Control Act, I have the honour to table, in both official languages, a copy of the directive given to the Canadian Nuclear Safety Commission regarding the health of Canadians.

## AGING

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF SPECIAL COMMITTEE PRESENTED

**Hon. Sharon Carstairs,** Chair of the Special Senate Committee on Aging, presented the following report:

Tuesday, December 11, 2007

The Special Senate Committee on Aging has the honour to present its

#### SECOND REPORT

Your committee, which was authorized by the Senate on Thursday, November 1, 2007, to examine and report upon the implications of an aging society in Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its study.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and

Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

SHARON CARSTAIRS

*Chair*

(For text of budget, see today's Journals of the Senate, Appendix A, p. 372.)

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

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

[English]

### STUDY ON PRESENT STATE AND FUTURE OF AGRICULTURE AND FORESTRY

#### REPORT OF AGRICULTURE AND FORESTRY COMMITTEE TABLED

**Hon. Joyce Fairbairn:** Honourable senators, I have the honour to table, in both official languages, the interim fourth report of the Standing Senate Committee on Agriculture and Forestry entitled *Livestock Industry*.

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

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

• (1420)

### HUMAN RIGHTS

#### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON ISSUES RELATED TO NATIONAL AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS—REPORT OF COMMITTEE PRESENTED

**Hon. Jim Munson,** for Senator Andreychuk, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, December 11, 2007

The Standing Senate Committee on Human Rights has the honour to present its

#### SECOND REPORT

Your committee, which was authorized by the Senate on Wednesday, November 21, 2007, to examine and monitor issues relating to human rights and, *inter alia*, to review the machinery of government dealing with Canada's international and national human rights obligations respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to travel outside Canada, for the purpose of such study.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

A. RAYNELL ANDREYCHUK

*Chair*

(For text of budget, see today's Journals of the Senate, Appendix B, p. 381.)

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

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

#### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS—REPORT OF COMMITTEE PRESENTED

**Hon. Jim Munson,** for Senator Andreychuk, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, December 11, 2007

The Standing Senate Committee on Human Rights has the honour to present its

#### THIRD REPORT

Your committee, which was authorized by the Senate on Wednesday, November 21, 2007, to monitor the implementation of recommendations contained in the committee's report entitled *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, tabled in the Senate on April 25, 2007, respectfully requests that it be empowered to engage the services of such counsel, technical, clerical and other personnel as may be necessary for the purposes of such study.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

A. RAYNELL ANDREYCHUK

*Chair*

(For text of budget, see today's Journals of the Senate, Appendix C, p. 389.)

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

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

BUDGET AND AUTHORIZATION TO ENGAGE  
SERVICES—STUDY ON CASES OF ALLEGED  
DISCRIMINATION IN HIRING AND PROMOTION  
PRACTICES AND EMPLOYMENT EQUITY FOR  
MINORITY GROUPS IN FEDERAL PUBLIC SERVICE—  
REPORT OF COMMITTEE PRESENTED

**Hon. Jim Munson**, for Senator Andreychuk, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, December 11, 2007

The Standing Senate Committee on Human Rights has the honour to present its

FOURTH REPORT

Your committee, which was authorized by the Senate on Wednesday, November 21, 2007, to examine cases of alleged discrimination in the hiring and promotion practices of the Federal Public Service and to study the extent to which targets to achieve employment equity for minority groups are being met, respectfully requests that it be empowered to engage the services of such counsel, technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

A. RAYNELL ANDREYCHUK  
*Chair*

(For text of budget, see today's Journals of the Senate, Appendix D, p. 395.)

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

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

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 PRESENTED

**Hon. Jim Munson**, for Senator Andreychuk, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, December 11, 2007

The Standing Senate Committee on Human Rights has the honour to present its

FIFTH REPORT

Your committee, which was authorized by the Senate on Wednesday, November 21, 2007, to invite the Minister of Indian Affairs and Northern Development to appear with his officials before the committee for the purpose of updating the members of the committee on actions taken concerning the recommendations contained in the committee's report entitled: *A Hard Bed to lie in: Matrimonial Real Property on Reserve*, tabled in the Senate November 4, 2003, respectfully requests that it be empowered to engage the services of such counsel, technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

A. RAYNELL ANDREYCHUK  
*Chair*

(For text of budget, see today's Journals of the Senate, Appendix E, p. 401.)

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

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

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Joan Fraser**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, December 11, 2007

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to table its

FOURTH REPORT

Your committee, to which was referred Bill C-13, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments), has, in obedience to the order of reference of Wednesday, November 21, 2007, examined the said Bill and now reports the same with the following amendments:

1. *Clause 18, page 7:* Replace lines 3 and 4 with the following:



“appears shall advise the accused of his or her right to apply for an order under subsection”.

2. *Clause 19, page 7:* Replace, in the English version, lines 31 and 32 with the following:

“(a) cause the portions of an information or indictment against the accused that are in an”.

3. *New clause 21.1, page 9:* Add after line 3 the following:

**“21.1 The Act is amended by adding the following after section 532:**

**532.1** The Minister of Justice shall prepare and cause to be laid before each House of Parliament an annual report for the previous year on the operation of the provisions of this Part that includes

(a) the number of orders granted under section 530 directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages of Canada;

(b) the number of trials held in French outside the provinces of Quebec and New Brunswick; and

(c) the number of trials held in English within the province of Quebec.”.

4. *New clause 21.2, page 9:* Add before line 4 the following:

**“21.2 The Act is amended by adding the following after section 533:**

**533.1** (1) Within three years after this section comes into force, a comprehensive review of the provisions and operation of this Part shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken under that subsection or within any further time that may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.”.

5. *New clause 45.2, page 20:* Add after line 16 the following:

**“45.2 (1) If Bill C-2, introduced in the 2nd session of the 39th Parliament and entitled the *Tackling Violent Crime Act* (the “other Act”), receives royal assent, then subsections (2) to (4) apply.**

**(2) If subsection 21(3) of the other Act comes into force before section 7 of this Act, that section 7 is replaced by the following:**

**7. Section 255 of the Act is amended by adding the following after subsection (3.2):**

(3.3) For greater certainty, everyone who is liable to the punishment described in any of subsections (2) to (3.2) is also liable to the minimum punishment described in paragraph (1)(a).

**(3) If subsection 21(3) of the other Act comes into force on the same day as section 7 of this Act, then that section 21(3) is deemed to have come into force before that section 7 and subsection (2) applies as a consequence.”**

6. *Clause 46, page 20:* Replace line 17 with the following:

**“46. Sections 7, 8, 18 to 21.2, 29, 35, 37 to 40,”.**

Your committee has also made certain observations, which are appended to this report.

Respectfully submitted,

JOAN FRASER  
*Chair*

**OBSERVATIONS  
to the Fourth Report of the Standing Senate Committee on  
Legal and Constitutional Affairs  
(Bill C-13)**

Your Committee would like to express an additional concern on the use of official languages in criminal proceedings, with regard to the special situation of Canada's Aboriginal people.

Clause 31 of Bill C-13, An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments), refers to the Territory of Nunavut. Your Committee is sensitive to the reality that many Aboriginal people speak neither of Canada's official languages. The additional difficulties created by interpretation are broadly recognized.

Your Committee pointed out in the observations attached to its Second Report on Bill S-10, *A second Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law*, tabled on November 25, 2004, the existence of “Aboriginal traditional law, [which] pre-existed the two other sources of law”, and urged that “a way should be found to integrate Aboriginal legal traditions into Canadian law alongside the civil and common law in a manner that will better reflect Canada's diversity.”

The importance of training and appointing judicial personnel in criminal cases who are fluent in the appropriate Aboriginal language, particularly in the more isolated northern communities, should be among the

priorities of the Department of Justice and the Department of Indian and Northern Affairs. To this end, the Committee also urges the government to collect statistics on the number of criminal proceedings where aboriginal languages are used.

The Committee notes that the Minister of Justice in his appearance before the Committee on November 28, 2007, acknowledged the concerns of the Committee that not only judicial personnel, but also defence counsel in some parts of the country lack the capacity to communicate with the accused in a minority official language. The Minister agreed to follow up with his provincial counterparts on the issue, indicating that:

[t]he training of defence lawyers is not exactly within the federal sphere, but I would be pleased to pass along those comments.

One final observation concerns the fear expressed by a witness of the potential extra-territorial application of clause 5 of the bill, which deals with the transmission and reception of information relating to book-making, betting and wagering, among other things. For the sake of clarity, the Committee wishes to note that it is satisfied that clause 5 of the bill will not have extra-territorial application.

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

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

[Translation]

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY CANADIAN ENVIRONMENTAL PROTECTION ACT AND RECEIVE PAPERS AND EVIDENCE FROM PREVIOUS SESSION

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources be authorized to undertake a review of the Canadian Environmental Protection Act (1999, c. 33) pursuant to subsection 343(1) of the said Act;

That the papers and evidence received and taken and work accomplished by the Committee on this subject during the First Session of the Thirty-ninth Parliament be referred to the Committee; and

That the Committee submit its final report no later than February 29, 2008.

[ Senator Fraser ]

• (1425)

## BUSINESS OF THE SENATE

### NOTICE OF MOTION TO AUTHORIZE COMMITTEES TO MEET ON MONDAYS DURING ADJOURNMENT OF THE SENATE

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting, I will move:

That, pursuant to rule 95(3), for the remainder of this session, the Standing Senate Committees on Human Rights, Official Languages, and National Security and Defence, as well as the Special Senate Committee on Anti-terrorism be authorized to meet at their approved meeting times as determined by the Government and Opposition Whips on any Monday which immediately precedes a Tuesday when the Senate is scheduled to sit, even though the Senate may then be adjourned for a period exceeding a week.

[English]

## APPROPRIATION BILL NO. 3, 2007-08

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-35, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2008.

Bill read first time.

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

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, later this day.

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

**Hon. Senators:** Agreed.

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

On motion of Senator Comeau, with leave of the Senate and notwithstanding rule 57(1)(f), bill placed on the Orders of the Day for second reading later this day.

## NATIONAL SECURITY AND DEFENCE

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

**Hon. Colin Kenny:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, notwithstanding rule 95(4), the Standing Senate Committee on National Security and Defence be authorized to sit on Monday, December 17, 2007, from 4:00 p.m. to 8:00 p.m., even though the Senate might be sitting at that time.

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

**Hon. Colin Kenny:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 95(3)(a), the Standing Senate Committee on National Security and Defence be authorized to sit on Monday, December 17, 2007, and on another day to be determined in January 2008, even though the Senate may then be adjourned for a period exceeding one week.

• (1430)

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

NEED FOR REFORM—NOTICE OF INQUIRY

**Hon. Peter A. Stollery:** Honourable senators, I give notice that, two days hence:

I shall call the attention of the Senate to the need for reforms to the Canadian International Development Agency.

## QUESTION PERIOD

### THE ENVIRONMENT

CLIMATE CHANGE—REPRESENTATIONS  
TO GAIN SUPPORT OF UNITED STATES

**Hon. Grant Mitchell:** Honourable senators, the government dismisses the Kyoto Protocol, not because it has anything in particular against the protocol, but because it has something against any protocol that might do anything to address climate change. They simply do not want to address climate change.

When that argument grows tired and old, they pull up the next argument, which is that Canada will not commit to anything serious until China, India and the United States commit to something serious, knowing full well that a Republican United States will never commit to something serious.

If this government was sincere about their argument that they will do nothing until the United States does something, one presumes they would be putting profound pressure on their friends in the United States to make that commitment.

Will the Leader of the Government in the Senate tell honourable senators what official, formal and constructive steps her government has taken to make the case to the United States that they have to make real commitments to real and mandatory reductions in emissions so that Canada can also undertake to do that?

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, I thank Senator Mitchell for that question. The government is exercising strong leadership on the issue of the environment. As I mentioned previously in this place, the position of the government has been clear, as enunciated by the Prime Minister at the G8, at APEC and at the Commonwealth Summit. Minister Baird is in Indonesia at the moment presenting our position.

The Government of Canada, as do many other governments in the world, recognizes that we cannot deal with what did not happen in the past; we must move forward on the important issues with regard to the environment. The way to move forward is to include major emitters like the United States, India and China in the negotiations.

In response to the specific question about the United States, the government has made it clear many times that it is unreasonable to expect this issue to progress if the United States, China and India are not part of the plan to go forward.

I am surprised at the senator's question because, rather than accusing us of being too close to the United States, he is now suggesting that we are not close enough to them and that we should be pressing them to get moving. In fact, we have always taken an independent position from the United States on the environment and on many other issues, as have past governments. It is clear that the way forward, as most people understand, is to involve all countries in this discussion, not just some countries.

**Senator Mitchell:** Honourable senators, if the government was serious about climate change, the way forward would be to talk to the United States, because a choice has been made to do that without our recommendation, and put pressure on the United States in public and private fora so that something would be done. For a start, has the Prime Minister picked up the telephone and phoned his good friend George W. Bush and told him that we need the United States to make a commitment to mandatory emissions reductions before Canada can find the wherewithal to proceed without them?

• (1435)

**Senator LeBreton:** Honourable senators, when the Prime Minister appeared at the United Nations he made that case clearly. I am surprised that the honourable senator did not notice.

I suggest to Senator Mitchell that crying over spilled milk, as my father used to say, over things that did not get done is not the way to move forward. The way forward is the action that the government has taken with the support of many other countries at the conference in Indonesia. This conference is not the end, but the beginning of a process as to where we go from here.

I believe the government is taking a responsible position. This position is the only one our government can take that will not only allow us to move forward with our own plans on the environment, but also live in the real world where other countries, the major emitters, must also be at the table to deal with this matter.

The Prime Minister, the Minister of the Environment and other ministers who have travelled to Washington, including our ambassador to the U.S., have made clear the government's position on the environment. Minister Baird has said many times, including yesterday, that it makes no sense in Canada to close down a coal-fired electrical producing plant only to turn around and buy the electricity from a plant in Michigan which continues to pollute at a higher cost and at the cost of Canadian jobs.

**Senator Mitchell:** The only consistent position this government has taken is the excuse for not taking action, that we could take on our own and become a leader in the world.

[Translation]

Even though the Prime Minister has not called President Bush, perhaps the Minister of the Environment has organized meetings with American officials in Bali on this issue, or is he preoccupied with allegations of bribery in the City of Ottawa?

[English]

**Senator LeBreton:** Honourable senators, I think the question of the honourable senator was lost in translation.

**Senator Mitchell:** Has the Minister of the Environment done anything in Bali to meet with officials of the United States to press this argument that they should commit, if that is what it takes for Canada to commit, or is he preoccupied with these allegations of bribery in the City of Ottawa?

**Senator LeBreton:** This is the kind of ridiculous question I hear from time to time.

The minister and many officials from Canada, including people like Pierre-Marc Johnson, are representing Canada at the climate change conference in Bali, Indonesia. They are engaging government officials from many countries. As I said in my earlier answers, many countries support Canada's position.

With regard to the rather inappropriate question of the honourable senator, why would Minister Baird be concerned about an issue with which he has no involvement? As has been said many times of this particular individual in Ottawa who has made these allegations, it is clear that there is no evidence which links this issue to Minister Baird. That was briefly mentioned in one of today's newspapers.

This type of mudslinging and innuendo is a serious situation.

• (1440)

The *Ottawa Citizen* ran an article this morning implicating various people who are in no way, shape or form connected with the current charges against the Mayor of Ottawa. The article made them part of the story. They might as well add my picture too because I voted for Larry O'Brien. That is how ridiculous it is becoming. They put the Prime Minister's picture in the story with a true and honest quote that Minister Baird and the government were not approached for an appointment and no appointment was made. I never saw such a fuss over something that never

[ Senator LeBreton ]

happened. This kind of nonsense, honourable senators, does not serve the Senate, either your party or my party well.

[Translation]

## PUBLIC WORKS AND GOVERNMENT SERVICES

### REPORT ON REVIEW OF GOVERNMENT POLLING

**Hon. Céline Hervieux-Payette (Leader of the Opposition):** Honourable senators, in the absence of the Minister of Public Works, my question is for the Leader of the Government in the Senate. As she knows, this week is the grand anniversary of the Federal Accountability Act, Bill C-2. I would like to ask her a question in connection with a question I asked her last week.

Since taxpayers have paid almost a million dollars for an independent study on polling, could the Leader of the Government in the Senate, who could give me an update on this issue, tell me when the government, two months later, intends to table the report on polling so that we may review it and make our own recommendations?

[English]

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, there were two parts to the answer from the Minister of Public Works and Government Services with regard to the amount of money spent on polling by the various departments. This information came as a surprise to most people in government. The minister announced there would be quick action and that measures will be taken to deal with the issue of polling by departments. With regard to the specific report, Minister Fortier said that the report would be released soon. Either the minister or I would be happy to let the honourable senator know roughly when that report will be made available to the public.

[Translation]

### POSSIBLE MORATORIUM ON GOVERNMENT POLLING

**Hon. Céline Hervieux-Payette (Leader of the Opposition):** Honourable senators, I would like to have a more specific explanation as to why we are not getting the said report. Last week the minister bluntly said that he intended to impose a moratorium. That was at two o'clock in the afternoon. Later that day, a member of his staff informed us there would be no moratorium. Nonetheless, between two o'clock and five o'clock, it seemed that the Marketing Research and Intelligence Association, which represents the polling industry, had already been in contact with the minister's office and with the Prime Minister's Office.

The Federal Accountability Act states that the government is to disregard lobbying and it condemns this abstract way of doing things. Can the Leader of the Government in the Senate tell us whether the people who intervened were lobbyists for their own industry? Did they make the government change its position? Is that why there will no longer be a moratorium? Can the minister tell us why a good position was reversed? Is it because of the intervention by the market research association or is simply because of how close we are to a possible election early in the new year?

[English]

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, the Minister of Public Works and Government Services adequately answered that question. Unlike the previous government, the polling was done by departments and not under the guise of polling for political purposes as in the past.

[Translation]

## PRIVY COUNCIL OFFICE

### OBJECTIVITY OF POLLING

**Hon. Céline Hervieux-Payette (Leader of the Opposition):** The minister did not understand my question. It is my understanding that \$1.3 million was spent by this government, specifically by the Privy Council, which is the department of the Prime Minister, and thus of all departments. It is quite surprising that the government would not know how much its ministers or departments spend. Were the polls conducted by the Prime Minister's Office objective polls, which have no value in terms of polling about the Conservative Party's election platform?

• (1445)

[English]

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, all of this information is public. When the newspaper through access to information came out with the number, the minister quite rightly stated that much of the polling and research done by the various departments in terms of the work within their departments came as quite a surprise to some of us. We are looking at the whole issue.

However, to suggest, as Senator Hervieux-Payette did, that somehow or other there is a political connection to this, is quite wrong. Minister Fortier was very forthright and apologized for the information that he supplied to the Senate during Question Period last week. He corrected the record the very next day.

## PUBLIC WORKS AND GOVERNMENT SERVICES

### POSSIBLE MORATORIUM ON GOVERNMENT POLLING

**Hon. Sharon Carstairs:** Honourable senators, my question is to the Leader of the Government in the Senate.

She keeps using the word "surprise." Is the government, of which she is a significant part, running this country or is it not? If it is not, why does it not resign?

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, the fact is that government departments are given sums of money, as the honourable senator knows because she was at one time part of the cabinet. When reports came out about the amount of money that the various departments had spent on research and polling, it was a surprise.

The government is looking at this situation. I assure the honourable senator that this is all publicly available

information. The government felt that this amount was perhaps more than what was required.

## LEGAL AND CONSTITUTIONAL AFFAIRS

### COMMENTS BY MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES

**Hon. Joan Fraser:** Honourable senators, my question is for the Leader of the Government in the Senate.

Last week, Senator Fortier, in response to questioning from the Leader of the Opposition in the Senate, made some remarks about the Standing Senate Committee on Legal and Constitutional Affairs. He said, among other things:

In 2003 the Auditor General looked at the problems with public opinion and polls. Where was this famous committee in 2005 when she talked about it? What was it doing? It was doing nothing, as usual.

I do not have the precise data for only 2005 before me. However, I recall for colleagues that in the first session of this Parliament, the Standing Senate Committee on Legal and Constitutional Affairs handled 13 bills, including the accountability bill and the Senate tenure bill, both of which were major bills. The Legal Committee amended six bills and made observations to seven bills, under the able chairmanship of Senator Oliver.

In fiscal 2006-07, the Legal Committee held 62 meetings, for a total of nearly 154 hours, and heard testimony from 231 witnesses. That actually ranks well ahead of a significant number of committees in this chamber, and all committees of the Senate, in my view, work hard.

Would the Leader of the Government in the Senate be prepared to suggest to her colleague that he attend a few meetings of Senate committees so that he might learn what we do? In the meantime, is she prepared to tell us all, including notably her own colleagues, Senator Oliver and Senator Andreychuk, whether she agrees with his view that the Standing Senate Committee on Legal and Constitutional Affairs usually does nothing?

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, I thank Senator Fraser for her question. I will be happy to provide Senator Fortier with a copy of her well-articulated defence of the Standing Senate Committee on Legal and Constitutional Affairs.

• (1450)

[Translation]

## NATIONAL DEFENCE

### RECRUITMENT

**Hon. Roméo Antonius Dallaire:** Honourable senators, my question is for the Leader of the Government in the Senate. I recently visited my regiment, and the soldiers told me that, over a period of 10 years' service in the Armed Forces, they had to participate in seven missions outside Canada. Soldiers now spend more time in combat than veterans did in World War II.

The government, which has been in power for almost two years, promised a significant increase — I have heard the number 23,000 — in Armed Forces personnel. Where do we stand in terms of the net increase, particularly with regard to the combat arms?

[English]

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** I thank the honourable senator for his question. As a member of the Armed Forces, Senator Dallaire is well aware that the recruitment process takes time. The Department of National Defence, the Chief of the Defence Staff and the military in general have put forth a vigorous effort to recruit new members to the Armed Forces.

In response to the honourable senator's question, I will ask the Department of National Defence to provide us with its latest recruitment numbers and the estimated amount of time necessary to have these new recruits combat-ready.

**Senator Dallaire:** The tone of the leader's response is not very optimistic; I hope the numbers will be more so. We have had two years to conduct that recruitment.

#### RIGHT OF TROOPS TO TALK TO THE MEDIA

**Hon. Roméo Antonius Dallaire:** Honourable senators, I would like to ask the leader a question regarding the right of troops to talk to the media.

In 1998, the previous government realized that for transparency — and probably morale — and information to all ranks that it was wise to allow the troops be interviewed. The previous government realized that it was better to let the corporals talk about what was going on than have the people of this country hear the news from spokespeople.

As one of the people who support the efforts in Afghanistan, I am amazed — I thought we should have sent more troops than we did — at the turn of events given that your best salespeople for the mission have been the troops, their families and their commitment.

What is this sudden gag order that the troops are no longer allowed to speak to the media?

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, I read that article as well. I am not aware of any gag order. By the way, many of the people who previously would have been in a position to train the recruits are in Afghanistan.

I do not recall a situation where troops in the field have necessarily been talking to the media. Their senior officers and the Chief of the Defence Staff have normally spoken on behalf of the troops in theatre, and in the country. I have seen nothing that has changed that situation.

**Senator Dallaire:** I beg to differ significantly with the leader in that regard, both by experience and by watching what is going on. I wonder if the leader could confirm that no such orders or instructions have come from the Privy Council or the Prime

Minister's Office concerning the troops speaking to the media in theatre, and possibly back home in training.

**Senator LeBreton:** I will take the senator's question as notice. Practically every time I turn on the news or open a newspaper, I see or hear stories of the troops in the field. The soldiers themselves are commenting on their work and the challenges they face.

From my own personal observations, I have not seen any evidence that any of the personnel are not free to speak. I think when most people in the military — and my own son was in the military — are involved in a particular endeavour, most often the officers in charge in the field speak for them. However, that does not prevent them from speaking to the media. Every day there are human interest stories, especially with the media who are on the ground in Afghanistan. I have seen nothing that has changed, but I will attempt to find out for Senator Dallaire.

• (1455)

**Senator Dallaire:** Honourable senators, I do not want to get into an argument about troops speaking in the field. My question is intended to remind the honourable senator that this instruction seems to have been very recent. I hope that is not true.

**Senator LeBreton:** Senator Dallaire said “seems to have been.” However, I will take the question as notice.

#### THE ENVIRONMENT

##### REPORT OF DEPARTMENT OF NATURAL RESOURCES

**Hon. Tommy Banks:** Honourable senators, my question is to the Leader of the Government in the Senate.

A number of polls demonstrate that climate change and the environment are issues at the forefront of the minds of Canadians. The Department of Natural Resources commissioned a report entitled *From Impacts to Adaptation: Canada and Climate Change in 2007*. This report has not yet been released, but questions about it have been addressed to ministers. When Minister Lunn, the Minister of Natural Resources, was asked about it, he referred in committee and in answer to other questions to Minister Baird, saying that questions about the report should be addressed to him. Minister Baird, who appeared before the House of Commons Committee on Environment and Sustainable Development on December 4, said that he had nothing to do with the study and that the questions should be addressed to Minister Lunn. When Minister Baird was asked whether Minister Lunn had been wrong to suggest that the inquiries should be directed to him, Minister Baird replied, “That is correct.”

My question is: Since neither the Minister of Natural Resources nor the Minister of the Environment are able to comment on this report, to whom should we address our questions?

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, did the honourable senator say that the report has not yet been released?

**Senator Banks:** I understand that the report has not been released.

[ Senator Dallaire ]

**Senator LeBreton:** We should wait for the release of the report before a minister is designated to respond to it.

**Senator Banks:** The report was completed a long time ago, and it deals with matters that are cogently important now. The report is at least weeks if not months old. Is it the government's intention to release the report in the foreseeable future?

**Senator LeBreton:** I will take that question as notice. The honourable senator is quite correct that people list the environment as an area of concern, among others, and the government has responded to concerns about climate change, on conservation, on enforcement and on clean water. In budget 2007, we invested \$4.5 billion in the environment. This amount was significantly more than what was provided by the previous government.

**Senator Banks:** If I understand correctly, the honourable senator will undertake to inform us whether the government intends to release the report in the foreseeable future.

[Translation]

## JUSTICE

### CRIMINAL CODE— POSSIBLE REVIEW OF THE PAROLE PROCESS

**Hon. Jean-Claude Rivest:** Honourable senators, the National Parole Board's decision to deny parole to Robert Latimer came as a big surprise in Quebec, as I am sure it did throughout Canada.

I know that, since taking office, the government has put forward a number of amendments to the Criminal Code in order to toughen legislation with respect to certain crimes, for example, the formula used for minimum penalties, although many people doubt the effectiveness of that formula.

To meet the needs of Canadians when it comes to safety, I would ask the minister whether it is not perhaps time for Canada to review the entire process. Some provinces with parole boards have done this. In Quebec, parole legislation was reviewed after a case in which a prisoner killed a young child while he was under government protection. Essentially, the problem with safety, administration and criminal law in Canada has more to do with the way paroles are administered than with the provisions of the Criminal Code, as the government seems to believe.

• (1500)

Of course, the Parliament of Canada cannot interfere in the decision on Robert Latimer's case, which is a quasi-judicial decision that must be respected. Nevertheless, given this situation, and other situations in Canada when criminals have been released under the parole act to the surprise of the public — it is not that the entire system is bad — I ask the minister to speak to her colleagues about whether or not it is time for Canada to thoroughly review all our parole procedures.

[English]

**Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)):** Honourable senators, with regard to the case of Robert Latimer, Senator Angus inquired about that

last week. There has been strong public opinion on both sides. As far as I know, no further discussion has taken place on the Latimer case.

With regard to the mandate of the parole board and the criteria by which they make their decisions, I am not aware at the present time of any overhaul or revision of the mandate of the parole board, but I will be happy to take the honourable senator's question as notice.

[Translation]

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I have the honour of presenting a delayed answer to a question raised in the Senate on October 30, 2007, by Senator Campbell regarding public safety and cigarette smuggling in Canada.

## JUSTICE

### CIGARETTE SMUGGLING

*(Response to question raised by Hon. Larry W. Campbell on October 30, 2007)*

This government has taken several measures on border security and trafficking, including beginning to hire and arm 400 new border officers.

The Royal Canadian Mounted Police (RCMP) and the Canadian Border Services Agency (CBSA) are among several federal and provincial agencies which have an interest in contraband tobacco enforcement. Under the Federal Tobacco Control Strategy, the RCMP and CBSA have dedicated intelligence analysts and officers to closely monitor the illicit tobacco market. The RCMP, in concert with domestic and U.S. law enforcement agencies at all levels, continues to work in close collaboration to combat the illicit tobacco market through various crime prevention, training and enforcement initiatives. This includes partnerships with First Nations police services to address the threat of organized crime and cross-border criminality, including contraband tobacco smuggling, on or around First Nations territories. The CBSA takes all smuggling of contraband at the border seriously. The CBSA continues to assist in the fight against contraband tobacco at the border by using a variety of contraband detection equipment, intelligence activities and officer training. The CBSA works to prevent, detect, analyze, monitor, seize and prosecute persons involved in tobacco smuggling.

This government recognizes that the issue of contraband tobacco is not unique to First Nations communities. Significant sources of contraband tobacco include: products unlawfully/lawfully manufactured in the U.S. (on or off reserve) and then smuggled into Canada; counterfeit tobacco products and international brands entering the country illegally; and stolen tobacco products (e.g., convenience store and cargo thefts, truck hijackings).

In addition to current efforts, with the money received in Budget 2006, the RCMP will be adding another 70 Customs and Excise members between now and 2010-2011 to address this issue.

#### ANSWERS TO ORDER PAPER QUESTIONS TABLED

##### PUBLIC WORKS AND GOVERNMENT SERVICES—RELOCATION OF PUBLIC SERVANTS

**Hon. Gerald J. Comeau (Deputy Leader of the Government)** tabled the answer to Question No. 6 on the Order Paper—by Senator Downe.

##### PUBLIC WORKS AND GOVERNMENT SERVICES—NAMING OF GOVERNMENT BUILDINGS

**Hon. Gerald J. Comeau (Deputy Leader of the Government)** tabled the answer to Question No. 8 on the Order Paper—by Senator Downe.

## ORDERS OF THE DAY

### CRIMINAL CODE

#### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Eyton, for the second reading of Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts.

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Honourable senators, I know that Senator Baker would like to say a few words about this bill at second reading, but in accordance with rule 37(3), I would like to reserve the 45-minute allocation for Senator Bryden, who is the critic for this bill.

[English]

**Hon. George Baker:** Honourable senators, I will not give a speech on this bill.

**Some Hon. Senators:** Shame.

**Senator Baker:** I rise to point out what may be a matter of concern to honourable senators when this bill goes to committee stage.

Before I do so, I wish to congratulate the government side of the Senate on what transpired last week before two committees of the Senate in which the Minister of Justice appeared. Those of you who were not there probably saw it on CPAC.

The minister congratulated the Senate. In his opening statement, he said that the government recognizes the expertise of the Special Senate Committee on Anti-terrorism, headed by

Senator Smith; and then he announced that a major change in the anti-terrorism legislation would be introduced by the government side at the first appropriate time, which the minister attributed to the knowledge and expertise of the Senate committee. I think that should be recognized, honourable senators.

The change, honourable senators — in case some of you missed it — is that the words “for any other just cause” will be removed from the anti-terrorism legislation. Those words enabled a judge to detain someone — perhaps put that person in jail eventually if the recognizance was violated — for the overly broad phrase “for any other just cause.”

The minister gave full credit to the Senate, and said some great words about the expertise of the Senate members in that Special Senate Committee on Anti-terrorism and the work the committee has done. I was not part of the committee, which has been there since the fall of 2001, as I understand it. I wanted to put that on the record.

As far as this bill is concerned, honourable senators would know that I read a lot of case law as a matter of interest. I have been doing that for 35 years. I have noticed from time to time when we pass legislation that some things in the legislation, perhaps sometimes inadvertently — but we could see it if we looked at it and analyzed it in the first instance — violate that great maxim that says, it is better to allow nine guilty persons to go free than to convict an innocent person.

One provision of the Criminal Code that I had a concern about in 1982 was a provision under the impaired driving bill, that said if someone failed to do a test — not that they failed the test, but that they failed or refused to do a test without just cause — that person would be considered to have committed the offence.

What we were concerned about in 1983 was that they must blow into an instrument when taking a drug-impairment test. The instrument has been described sometimes as being similar to blowing up a balloon. The concern was that perhaps some people cannot do that — people who have asthma or some other physical problems.

In the legislation, it says “without just cause.” If they have just cause, that means right now they would need to have a doctor take the stand to say that they have asthma and, therefore, they cannot provide a breath sample at roadside or in the police station.

That is part of our law right now; but then along comes this bill that is aimed at those people who take drugs by prescription. When this bill was first introduced in 2004 under the previous administration, the minister gave a speech and the department issued a press release that said this new scheme in the Criminal Code will be to catch those who drive while taking prescription drugs and illegal drugs.

One part of the bill concerns me, honourable senators. When we discuss it in committee, I think it may concern a lot of people.

Do not forget that to judge the effect that a prescription drug has on someone, a roadside physical dexterity test would be the first test given. If we look at the case law of recent years, it is similar to the tests that we see on the American television channel, and we will see this test now on Canadian television. In this bill, a camera will be able to film the entire procedure.

[ Senator Comeau ]



• (1510)

Honourable senators, I will provide an example of the test. At certain times of the year, such as Christmas and New Year's, police officers will stop vehicles at the side of the road and ask, "Have you been drinking today?" That is the first question asked. If the person says, yes, and because the law says if the officer has reasonable grounds to suspect that someone has alcohol in their system, the officer will request that the person blow into a roadside instrument. The person does that and if they fail, then there are "reasonable grounds to believe" and a demand is presented to the person to accompany the police officer to the police station to take part in a breathalyser examination regime. That is in the existing law.

Under this bill, consider this question to a driver: "Do you have any drugs in your system or have you taken any drugs?" The person might reply, "Yes, I am on certain types of drugs." The legislation then says that a roadside physical coordination test shall be done. I have seen the list of tests and it includes standing on one foot without losing one's balance. You lose points if you put out your hands to keep your balance. The next test is to take nine steps in a straight line in a heel-to-toe fashion. You lose points if you depart from the heel-to-toe. Then there is the touch-the-nose test, and you lose points if you cannot do it. Another test, which I omitted, is to try to hop a short distance on one foot. There are five tests in all and they fall under a new section 254, physical coordination tests.

The next page of the bill includes an evaluation. An evaluation will be done and if a person fails or does not earn enough points on the tests, then the officer has reason to believe that the person may be impaired by drugs. The person will be asked to accompany the officer to the station where an evaluation officer will conduct an evaluation. The evaluation covers the pupils of the eyes, the colour of the person's skin and blood pressure. The third step is for the officer to request a urine sample, which is examined by a toxicologist at another location. If a drug is found present in the person's urine, then he or she is guilty of being impaired.

The next section that concerns me states that "everybody commits an offence who, without reasonable excuse, fails or refuses to comply with the demand made under this section."

**Senator Segal:** Is that new?

**Senator Baker:** That is not a new section. That is precisely stated in the current legislation. Thus, we encounter the problem that someone could fail to provide an adequate sample without just cause if one does not have a good medical reason presented at the court trial.

When one is asked to provide a sample of bodily fluids, remember that everything a person does when at a police station is in the company of a police officer, and for good reason: The integrity of the sample must be maintained. For example, a person cannot be allowed to enter a washroom and ingest something that would skew the test results so there is constant supervision.

Honourable senators, I can understand where there could be a problem with someone in the first instance performing the physical dexterity tests. I can also understand where there could

be a problem with someone who must give a sample of their bodily fluid on demand in front of another person, given that, if one fails to do so, one is guilty of the offence.

The existing law states "without reasonable excuse." As pointed out by the honourable senator and as stands in the code, one could have asthma and prove it, but not under this proposed legislation. This is new law. Therefore, the committee must examine Bill C-2 carefully so that someone innocent is not convicted simply because some alternate means is not provided in the legislation to prove innocence. That is the only clause of the bill that I wanted to highlight for honourable senators today. Expert witnesses should be heard on the subject matter of Bill C-2.

I mention this in detail because there is a great deal of case law on the books in respect of people who have been judged to be impaired by prescription drugs. The Manitoba Court of Appeal struck down the drug recognition examination when this was introduced by an honourable member in 2007 because the examination was deemed to be only 44 per cent to 76 per cent accurate. It was, therefore, not enough to provide, beyond a reasonable doubt, reason to convict.

**The Hon. the Speaker *pro tempore*:** The honourable senator's time has expired. Is he asking for time to continue?

**Senator Baker:** Honourable senators, I would ask for a couple of minutes.

**Some Hon. Senators:** Agreed.

**Senator Comeau:** Two short minutes.

**Senator Baker:** Honourable senators, I do not think that the intention of the government is to put anything in this bill that would convict innocent people. However, I firmly believe that we should take whatever steps we can. Perhaps the existing law is deficient and should have said the police could take a sample if the accused wished them to do so. A person would have the option to declare his or her innocence and ask an officer to take a sample to prove it. The police officer could say, "No, I am not required to do that." One sees case after case to support that.

Perhaps something should be considered in the bill to safeguard against these kinds of convictions. Honourable senators, this will be a major change in our law because these tests will be conducted at roadside in every community in the country. You will see people outside their cars, in full public view, trying to walk a straight line and to stand on one foot. That is new for our system. Whereas all the tests were done quietly in the back of a police cruiser, now perhaps it will be something you will see on television every day.

• (1520)

I do not see anything wrong with the rest of the bill. I noticed that the Canadian Bar Association was disturbed about certain sections of the bill. I do not agree. I think that most of what is in that provision is good law, with the one caveat that I think we had better examine that one particular section carefully.

**Hon. Sharon Carstairs:** Honourable senators, we are at second reading of Bill C-2, which is an omnibus bill. I want to raise my concerns about the principle of mandatory minimum sentences. I want to relate my concerns, honourable senators, to the case of Robert Latimer.

Robert Latimer was convicted of the murder of his daughter, Tracy, who was a disabled child in incredible pain. The parents of this child probably did not receive the support they required from the social service network. At one point, they released their child into the care of social services. The child lost 35 pounds and the parents asked that the child be returned to them, where they would spend two to three hours at each feeding getting food into this seriously physically and mentally disabled child.

What Robert Latimer did was wrong. Robert Latimer murdered his child. Of that, I think there is no doubt. What is at doubt is the appropriateness of the punishment to which Robert Latimer has been subjected.

When I was in Geneva last week and I heard the word that he had been denied parole, frankly, I was dismayed. Robert Latimer has served seven years in jail. That is one year more than Karla Homolka. I repeat: seven years in jail.

The jury that convicted Robert Latimer in his first trial said they wanted him to receive a punishment of two years. The judge who brought down that sentence said he should serve one year in prison and one year in custody on his farm. However, that sentence was overturned. It was overturned because the appeal court ruled, rightly, that the sentence is not what the law says.

The law says that anyone convicted of murder, whether it is first degree or second degree, is sentenced to life imprisonment. If it is first-degree murder, the minimum eligibility for parole is 25 years; and if it is second-degree murder, minimum eligibility for parole can be 10, 15 or 25 years, depending on the judge.

The sentence for Robert Latimer was life in prison, with no eligibility for 10 years. The one window of opportunity is that he can apply for day parole at seven years. That is what Robert Latimer applied for, day parole, and it was denied. The reason it was denied, honourable senators, was because they said he was not sufficiently remorseful. With the greatest respect, Robert Latimer believes what he did was the right thing. I may not believe that — in fact, I do not believe it — but he believes it.

To recommend that Robert Latimer receive more counselling will not accomplish anything. The question now becomes: Will he even be considered eligible for parole in 10 years or will he be asked to spend the rest of his life in jail? If anyone ever asks Robert Latimer if he thinks what he did was wrong, he will say: No. I lived with that child. She was in incredible pain. I had no choice. I did what I had to do.

That is the danger, honourable senators, of mandatory minimum sentences.

The Special Senate Committee on Euthanasia and Assisted Suicide, in its report *Of Life and Death* in 1995 — committee members remaining in this chamber are Senator Keon, Senator Corbin and myself — recommended that there be a murder 3 charge. If a jury, finding a conviction of murder, then said that they believed that the murder was done for compassion, the jury should have a right to recommend to the judge an appropriate

sentence for that crime. In other words, in a murder 3 charge, the mandatory sentence is eliminated.

Honourable senators, mandatory minimums are regarded as a quick fix, and that we can deal with a problem immediately. However, honourable senators, sometimes mandatory minimums lead to an incredible miscarriage of justice. In the case of Robert Latimer, leaving him in jail for one day longer, in my view, is an incredible miscarriage of justice.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, I was moved by the speech given by Senator Carstairs and I would like to ask her a question. Could she please tell us if Mr. Latimer went to the Supreme Court, or he simply accepted the Court of Appeal verdict?

[English]

**Senator Carstairs:** No, this case was taken to the Supreme Court of Canada. One issue that the Supreme Court of Canada raised in their judgment was that there was medication that could have kept Tracy Latimer from suffering the incredible pain that she suffered. Unfortunately, they never identified what that medication was. To this day, no one knows what medication could have kept her from that incredible pain.

On motion of Senator Tardif, debate adjourned.

### APPROPRIATION BILL NO. 3, 2007-08

#### SECOND READING

**Hon. Terry Stratton** moved second reading of Bill C-35, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2008, presented in the Senate earlier this day.

He said: Honourable senators, Bill C-35, Appropriation Act No. 3, 2007-08, seeks Parliament's approval to spend \$8 billion in voted expenditures as outlined in Supplementary Estimates (A).

Supplementary Estimates (A) for the current year, fiscal 2007-08, were tabled in the Senate on October 30, 2007 and referred to the Standing Senate Committee on National Finance. They were discussed in some detail with officials from the Treasury Board Secretariat in their appearance before the committee on November 20.

Senator Day, in presenting the committee's report on these supplementary estimates last Thursday, has already provided the Senate with an extensive account of the issues, questions and concerns raised by the honourable senators at the meeting and of the answers that were provided. I thank Senator Day for that.

• (1530)

I take this opportunity to thank and acknowledge the officials from the Treasury Board, who helped the committee understand these requests for supply: Mr. David Moloney, Senior Assistant Secretary in the Expenditure Management Sector, and Mr. Brian Pagan, Acting Executive Director in the Expenditure Operations and Estimates Division of the Expenditure Management Sector.

Honourable senators, Supplementary Estimates (A) reflect \$13.6 billion in budgetary spending. Of this, \$8 billion requires the approval of Parliament and includes such major budgetary items as \$1.5 billion for National Defence operations, including \$875 million for the Canada First defence plan; \$1.2 billion reflecting the new central vote for annual routine adjustments for departmental operating budget carry forward; \$573.8 million in funding for the Canada Strategic Infrastructure Fund; \$500 million for a new central vote for departmental payroll requirements; \$327 million to fund infrastructure under the Provincial-Territorial Base Funding infrastructure program; \$182 million in funding to help low-income Canadians, people with disabilities, seniors and Aboriginals to live in decent, affordable housing; \$127 million in funding for the Municipal Rural Infrastructure Fund; \$121 million in funding for additional RCMP positions and law enforcement priorities; and \$116 million in funding for the ecoAUTO Rebate Program.

These supplementary estimates also outline an increase of \$5.5 billion in budgetary statutory spending that has been previously authorized by Parliament.

Adjustments to projected statutory spending are not part of this supply bill and are provided for information purposes only in the supplementary estimates documents. They include \$1.5 billion to implement the Clean Air and Climate Change Trust Fund; \$1.2 billion for fiscal equalization; \$795 million in support of the Canada Social Transfer; \$614 million for transitional payments; \$612 million to initiate the Patient Wait Time Guarantees; \$401 million for the cost of production benefit to assist agricultural producers; \$300 million to assist provinces and territories with the cost of the vaccine that helps prevent cervical cancer; and \$250 million for child care spaces.

These expenditures are all within the planned spending set out by the Minister of Finance in his March 2007 budget.

Honourable senators, should you require additional information, I will try to provide it.

**Hon. Joseph A. Day:** Honourable senators, as Senator Stratton has just indicated, I spoke at length on the report of our committee, which had studied the Supplementary Estimates (A) document, and we reported on that last week. Supplementary Estimates (A) was received approximately a month ago. The first step that we take when we look at Bill C-35, which is a supply bill, is to look at the schedules attached to it to ensure that those schedules reflect what is in Supplementary Estimates (A). There are two schedules, 1 and 2. I have done so and confirmed that the schedules are the same. Therefore, we are looking in the supply bill at seeking authority through legislation to implement the right to expend the funds outlined in Schedules 1 and 2.

I have pointed out in the past that Schedule 1 is for this fiscal year expiring March 31, whereas Schedule 2 extends for a two-year period. It is important for honourable senators to be aware of that. The Schedule 1 document is a large part of the expenditures. We are talking here of \$13 billion, honourable senators, but as has been pointed out by Honourable Senator Stratton, \$5.5 billion of that is statutory and is provided in the Supplementary Estimates (A) for information purposes only.

The amount that honourable senators are being asked to vote on at this time is \$8.1 billion divided between the two schedules. We have been assured by Treasury Board that the \$13 billion,

being the \$8 billion plus \$5 billion, is still — when one takes all the authority that was asked, both statutory authority and voted appropriations in the Main Estimates, and adds the \$13 billion being requested at this time — within the projected expenditure of the government of \$233.4 billion for the year. It is still within that limit. We are not up there yet, so one can anticipate a Supplementary Estimate (B), which will probably bring the expenditure up to the anticipated full-year expenditure. That Supplementary Estimate (B) is normally received here by late March. It picks up all of the late initiatives in the year that were probably known but not fully developed enough to claim a specific amount.

When I gave the report last week, I pointed out — and it is important for us to keep this in mind — the report indicated that the anticipated expenditure for this fiscal year of \$233.4 billion can be compared to last year's known expenditures, what was expended by the government in fiscal 2006-07 of \$222 billion; 233, 222 and the year before that, 209. One sees a trend we must be careful of, because we become dependent on the larger amount in the good times and it requires the government in power when the bad times set in to make some serious cuts, as was done in the 1990s.

The other trend that is somewhat troubling is that these supplementary estimates are in an amount of \$13.6 billion. That is higher than estimates tend to be. The explanation for why they are higher can be seen if one compares supplementary estimates in good times versus supplementary estimates in bad times. The implication is that departments see that government is doing well; there is a surplus; therefore, we can take on more initiatives and spend more money in the supplementary estimates. That is something we should be very careful about in the future, honourable senators.

This bill is not extensive. There are really only seven clauses and two annexes. I pointed out the two different schedules. Schedule 2 extends for two years. There is one clause that I would like to point out and that is clause 3(2). The provisions of each item in Schedule 1 and 2 are deemed to have been enacted by Parliament on April 1, 2007. With the passage of this bill we in effect are giving authority retroactively to April 1 of this particular year. It is interesting to find these little elements tucked away in here. I wanted honourable senators to be aware of that particular one.

Of the full amount of \$8 billion in voted appropriations that we are being asked to approve, \$78 million is in Schedule 2 for those various agencies outlined in Schedule 2. By far the largest portion of the \$8 billion that we are being asked to approve in Schedule 1 is for this fiscal year.

Honourable senators, I will be voting in favour of this supply bill.

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

**Hon. Senators:** Question.

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

Motion agreed to and bill read second time.

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

[*English*]

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

• (1540)

## THE SENATE

### MOTION TO EXTEND WEDNESDAY SITTING AND AUTHORIZE COMMITTEES TO MEET DURING SITTING ADOPTED

**Hon. Gerald J. Comeau (Deputy Leader of the Government),** pursuant to notice of December 6, 2007, moved:

That, notwithstanding the Order adopted by the Senate on October 18, 2007, when the Senate sits on Wednesday, December 12, 2007, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and

That committees of the Senate scheduled to meet on Wednesday, December 12, 2007 be authorized to sit even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

He said: Honourable senators, for the purpose of clarity, Senator Day indicated today that this motion will allow the Finance Committee to sit before 4 p.m., which is the case. The motion has been agreed to by both whips.

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

Motion agreed to.

[*Translation*]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Joyal, P.C., for the second reading of Bill S-213, An Act to amend the Criminal Code (lottery schemes).—(*Honourable Senator Tkachuk*)

**The Hon. the Speaker *pro tempore*:** Honourable senators, I wish to advise you that the Honourable Senator Di Nino has made a written declaration of private interest regarding Bill S-213, An Act to amend the Criminal Code (lottery schemes), which is currently before the Senate. In accordance with rule 32.1, the declaration shall be recorded in the *Journals of the Senate*.

Order stands.

## PUBLIC SERVICE EMPLOYMENT ACT

### BILL TO AMEND—SECOND READING

Leave having been given to proceed to Senate Public Bills, Order No. 12:

On the Order:

Resuming debate on the motion of the Honourable Senator Ringuette, seconded by the Honourable Senator Smith, P.C., for the second reading of Bill S-219, An Act to amend the Public Service Employment Act (elimination of bureaucratic patronage and establishment of national area of selection).—(*Honourable Senator Stratton*)

**Hon. Terry Stratton:** Honourable senators, I am pleased to speak today at the second reading stage of the bill presented by my honourable colleague from New Brunswick, Senator Ringuette. Bill S-219 contains two major parts that I will address today.

The first part of the bill deals with bureaucratic patronage. Specifically, it would allow the Public Service Commission to define “bureaucratic patronage” in its regulations. I am sympathetic to this part of the senator’s bill, but there are problems with it.

First, under the Public Service Employment Act, about which I just spoke, Parliament gave the power to rule on abuses of authority to a new independent body, the Public Service Staffing Tribunal. The legislation makes it clear that “abuse of authority” includes the notions of bad faith and personal favouritism, the very types of behaviour that go hand in hand with bureaucratic patronage. Therefore, “bureaucratic patronage” is already covered by our laws. In effect, rather than bringing clarity to the matter, this bill muddies the water.

If Bill C-219 becomes law, we would also be forced to make a major change in the machinery of government. We would be required to transfer the authority to rule on bureaucratic patronage from the tribunal to the Public Service Commission.

[*Translation*]

Last, the bill would place the PSC in a situation of conflict of interest, since the commission is entitled to appear before the tribunal.

[*English*]

While we support the intent of the proposal in Senator Ringuette’s bill regarding bureaucratic patronage, the tribunal already has this authority. By transferring this authority to the PSC we would be undermining the tribunal and our existing laws.

I would now like to address the second part of Senator Ringuette’s bill, which would eliminate the use of geographic criteria in all external competitions run by the Public Service Commission. This issue has been the subject of intensive debates in Parliament for a number of years and, like my colleague Senator Ringuette, I am very keen to arrive at a workable solution. I have said many times in this chamber that I am

sympathetic to the goals of this bill. Opening external public service jobs to all Canadians regardless of where they live is something we all can support. It is worth remembering that the Public Service Commission has been diligently working on this issue for some time and has been making steady progress.

[Translation]

Over the past two years, the PSC has adopted a responsible, progressive approach in order to extend the use of a national area of selection to all advertised appointment processes.

[English]

The PSC has conducted an impact analysis every step of the way to ensure that the impact of each change is understood, including ensuring that the system is able to cope with the rise in applications. Full implementation is expected in December 2008, which is in itself pretty remarkable. This is a year behind the schedule originally established, but it is clear the PSC is moving along judiciously. For example, the president of the PSC testified here last month that she was surprised by how few Canadians were interested in applying for jobs in Ottawa. She learned about this through one of the impact analyses that were conducted during the phased-in approach to expanding the use of national area of selection.

Senator Ringuette's bill, however, does not take into consideration the readiness of departments. It would simply bring in a national area of selection across the board for all external competitions. Implementation would be immediate, with a likely surge in applications and annual costs, likely into the millions of dollars. This is in large part because the bill targets all external advertised appointments, including casual, seasonal, term and co-op student employment.

If Bill S-219 becomes law, we could expect gridlock to result in the appointment system across the country. This is the message I have taken away from the PSC, which currently enjoys the discretion to limit the national area of selection where it sees fit based on timing, cost and the technical and resource capacity of departments. Senator Ringuette's bill would take away that discretionary power, a power that was reaffirmed by Parliament only four years ago with passage of the Public Service Employment Act in 2003.

Therefore, we cannot support this bill. The PSC already has the authority from Parliament to eliminate geographic criteria and is moving forward as rapidly and judiciously as possible.

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

**Some Hon. Senators:** Question.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Tardif bill, bill referred to the Standing Senate Committee on National Finance.

## KELOWNA ACCORD IMPLEMENTATION BILL

### SECOND READING

Leave having been given to proceed to Commons Public Bills, Order No. 5:

On the Order:

Resuming debate on the motion of the Honourable Senator Campbell, seconded by the Honourable Senator Peterson, for the second reading of Bill C-292, An Act to implement the Kelowna Accord.—(Honourable Senator Stratton)

• (1550)

**Hon. Terry Stratton:** Honourable senators, I stand today in opposition to Bill C-292, the Kelowna Accord implementation bill. My position on the matter is informed by a careful analysis of the views expressed by my fellow senators and by a close study of relevant debates from the other place. This critical examination reveals undeniable significant truths.

While the meetings in Kelowna had good objectives and many good ideas, Bill C-292 articulates no strategy, but refers to a supposed "Kelowna Accord." No one denies that many meetings took place in Kelowna, but it is misleading to refer to any "accord." The term "Kelowna Accord" was coined by a journalist some two months after the end of the Kelowna meetings.

Thus, to reference any "accord" which implies some type of signed agreement is very misleading. With all due respect to the Kelowna process which took place, it is a simple, verifiable fact that no document was ever signed at the Kelowna meetings. Unfortunately, the only document that ever came out of the Kelowna meetings was a press release by the Liberal Party on the eve of an election, making certain large promises. What this means is that to adopt this legislation is to make a law which refers to either a document that does not exist, or to a Liberal press release.

Bill C-292 clearly calls on this government to abandon its current positive approach to Aboriginal issues — an approach based on clear, tangible results and reform of inadequate systems — in favour of the previous government's unfulfilled promises. There can be no doubt that the current approach has produced real progress on key issues such as drinking water, housing, schools and specific claim resolution, to name a few.

I encourage honourable senators to measure these accomplishments against Bill C-292, which has no tether to a real strategy and which could in the end cause mass confusion, thus erasing the progress achieved by the current government in addressing difficult challenges faced by so many Aboriginal people in this country.

As honourable senators are well aware, the litany of difficult challenges experienced by Aboriginal people has been well documented. The Auditor General and the Royal Commission on Aboriginal Peoples, for example, have both published scathing

reviews of government policy. Although aspects of their criticism vary broadly, both reputable bodies concluded that Canada's Aboriginal policy was woefully inadequate and investments of public money had been wasted on poorly designed programs that consistently failed to deliver tangible results. In a word, they have demanded that the system reform that which is being sought and worked toward by the current government.

Upon taking office, this government implemented a fresh approach to address the challenges that continue to plague too many Aboriginal people and communities. By working closely with national Aboriginal organizations such as the Assembly of First Nations, this government has begun to make real progress on initiatives that will improve the quality of life and system reform.

Even the most cursory examination of the public record will reveal that solid progress has been made in the past 20 months. In March 2006, for example, our government introduced the Plan of Action for Drinking Water in First Nations Communities, investing in water treatment plant upgrades and construction to ensure there is a reliable supply of safe, clean drinking water in these communities. Since that time, the number of high risk water systems has been reduced by more than half. The operators of treatment plants serving First Nations communities now have access to a telephone hotline that provides technical support around the clock, 365 days a year.

The October 16, 2007 Speech from the Throne reaffirmed our commitment to a water strategy to improve access to safe drinking water for First Nations.

Another vastly important example is the Prime Minister's announcement on June 12, 2007 of a decisive new approach to the resolution of specific claims — an approach that will improve the way specific claims are handled and resolve the existing backlog of outstanding claims once and for all. This claims process has the power and authority to settle hundreds of land claims in a short period of time. All Aboriginal leaders have thanked the government for bringing forward this solution.

As outlined recently in the Speech from the Throne, this government plans to present legislation to create an independent tribunal to bring greater fairness and more timely resolution to the specific claims process.

Over the past year and a half this government has also signed land claims agreements across Canada, from a Treaty Land Entitlement Settlement Agreement with Sturgeon Lake First Nation in Saskatchewan to the Nunavik Inuit Lands Claims Agreement in northern Quebec. Just this month, we signed an agreement-in-principle for the Bigstone Cree nation in Alberta. Honourable senators, I could go on.

The First Nation Market Housing Fund was announced in April. This is a \$300 million fund that will give First Nation members the opportunity to own their own homes on reserve by increasing access to financing, enabling more individuals to own or rent their home on reserve. It is anticipated that up to 25,000 new housing units over 10 years could be provided through this fund.

[ Senator Stratton ]

This government has entered into a new partnership with the Province of Alberta and Alberta First Nations that will see significant improvements for child and family services for First Nations in Alberta. An agreement was signed to work together with the Province of Nova Scotia and Mi'kmaq Family and Children's Services of Nova Scotia to introduce early intervention and prevention services for First Nations Child and Family Services on reserves in Nova Scotia.

I could mention the First Nations Infrastructure Fund which simplifies access to infrastructure funding for First Nations governments which will ultimately improve the quality of life in these communities.

Certainly, we must also recognize the principal efforts of the government to repeal section 67 of the Human Rights Act, thus granting access to human rights protection to status Indians. It is high time that this historical injustice be undone.

Finally, Canada's new government is also responsible for completing the Indian Residential Schools Settlement. This agreement finally brings some measure of compensation for the suffering of Indian residential schools survivors. Thanks to this government, Aboriginals — after a long wait — have begun to receive what has been withheld from them for so long.

The legislation before us today proposes that we set aside this government's strategy and pursue the directives of a non-existing document. The only sensible option is to reject the invitation.

Honourable senators, this government's approach is strong and productive while Bill C-292 is vague and references a non-existing document. I encourage honourable senators to join me in opposing Bill C-292.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Tardiff, bill referred to the Standing Senate Committee on Aboriginal Peoples.

[Translation]

STATUTES REPEAL BILL

THIRD READING

**Hon. Tommy Banks** moved third reading of Bill S-207, An Act to repeal legislation that has not come into force within ten years of receiving royal assent.

Motion agreed to and bill read third time and passed.

• (1600)

[English]

## INTERNATIONAL BOUNDARY WATERS TREATY ACT

### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Murray, P.C., for the Honourable Senator Carney, P.C., seconded by the Honourable Senator Day, for the second reading of Bill S-217, An Act to amend the International Boundary Waters Treaty Act (bulk water removal).—(*Honourable Senator Comeau*)

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, I would like to invoke rule 37(3) to reserve the 45 minutes for the critic of the bill.

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

**Hon. Senators:** Agreed.

**Hon. Pat Carney:** Honourable senators, I want to speak at this point on second reading of my private members Bill S-217, which is an act to amend the International Boundary Waters Treaty Act. This bill was introduced in the first session of this Parliament, and it has been reintroduced in this session.

The purpose of the bill is to correct an apparent loophole in an amendment to the International Boundary Waters Treaty Act passed by the Liberal government in 2002. It is my view, and that of some expert witnesses, based on my experience as Minister of International Trade responsible for the Free Trade Agreement, that the amendment could enable the Minister of Foreign Affairs to licence bulk water exports without parliamentary debate or approval. Should this happen, it could inadvertently trigger provisions in the NAFTA which could allow access to Canadian freshwater in the Great Lakes basin by the U.S. and Mexico.

There are a number of problems with the bill as amended in 2002 but, principally, I am particularly concerned that the amended legislation does not include a definition of “bulk water removals,” which are defined in the regulations and which could easily be changed without recourse to Parliament, and that the unfettered ministerial discretion permitted in the legislation is too broad. It is important to note that this view is supported not only by the expert witnesses at the Senate hearings in 2001 but also by the Privy Council Office at the time.

“Bulk water removals” is not defined in the legislation but only in the regulations. My proposed amendment would define “bulk water removals” in the legislation, not in the regulations, and would restrict ministerial discretion by requiring that any licences to remove bulk water must be approved by both the Houses of Parliament; both Houses would have to approve any such licences.

I understand the Deputy House Leader is the critic of this bill. I am interested in having this matter sent to committee because there is a complete conflict between the views of the DFAIT officials who drafted the bill and the expert witnesses who came to our hearing.

Minister Bernier wrote to me on November 30, and I will table this letter. In the letter he says that he appreciates the concerns about the need to ensure that a high level of protection is in place for Canadian waters. He goes on to say:

The International Boundary Waters Treaty Act contains a statutory prohibition on bulk water removals from boundary basins. This measure is intended to protect ecosystems, and was driven by the concerns in the 1990s about possible bulk water exports. A limited number of limited exceptions are provided for in the regulations that are consistent with the intention of the prohibition.

He notes that exemptions include firefighting and emergency provisions, and we have no problem with those exemptions.

The minister goes on to state:

... the ministerial licensing powers do not pertain to nor create any capacity for the Minister of Foreign Affairs to licence bulk water removals from water boundary basins—something that is expressly prohibited by the statute.

That is not the case if you read the bill. As Senator Murray has pointed out, the minister has unfettered rights to provide such licensing.

Not only did the expert witnesses at the time say that there was a possibility that this could open the door to the provisions of NAFTA, but we sent the minister's reply and that of the officials to our own Senate counsel. The advice that we as senators have from our counsel is that the minister's letter and the position of DFAIT do not address the weaknesses that Bill S-217 is designed to remedy, that is, the fact that bulk water is not defined but is left to regulation and that the act grants unfettered power to cabinet to make exceptions. Counsel goes on to say that the answer prepared by DFAIT reflects the same position they held in 2001 when the amendment originally passed through Parliament. This is the typical Senate counsel who gave a handy response. As to who is wrong, this matter is not clear-cut because everything hinges on how the language of the amendment is interpreted. There could be evidence to support my interpretation and the interpretation of DFAIT.

Honourable senators, in a case like this, the only real recourse is to send it to committee and have it clarified so it is on the record.

I asked earlier, in response to an earlier letter from the ministry, about what licences have been issued. According to the material supplied by DFAIT, every licence to remove bulk water must have an environmental assessment review. You will recall I raised those questions here in the Senate on October 30. I wanted to know if any licences have been issued and, if so, when were they and for how much? We received a long answer from the department saying specifically that licensing powers of the ministry neither pertain to nor create any capacity to licence bulk water removals from water boundary basins; that is expressly prohibited by the statute.

Accordingly, no ministerial licences under the IBWTA have been nor could be issued for bulk water removals.

The position of the department is somewhat weakened by its position that the proper remedy for regulation oversight is to send it to the committee on statutory instruments and regulatory

matters. As I pointed out in my earlier speeches, however, that overview and scrutiny is after the regulations have been changed and not before, and it could take up to 17 years to make such a review happen.

DFAIT's position, that the existing remedies are sufficient, is not justified in my position, and it leads to the interesting question that if no licences have been issued and if no ministerial licences could be issued, why did they bring in the amendment that provided for an extensive licensing scheme? Some of you who are committee members would perhaps enjoy asking that kind of question.

• (1610)

My position is simply that this is a very important matter and that, if there is a dispute about what the department says in 2007, which is the same as what it said in 2001, the matter should go to committee to have witnesses called and to have the department put their responses on the public record in defence of their existing legislation so that Canadians may be reassured that some future Parliament under pressure by the Americans or the Mexicans will not use this bill, the existing legislation without amendment, to allow bulk water exports through some sort of regulatory back door.

I leave this in your hands, honourable senators, and hope the matter will proceed to committee.

**The Hon. the Speaker:** Honourable senators, Senator Carney, in her address, had documents. With the permission of the house, the honourable senator would like to table those documents. Is permission granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** The documents will be so tabled.

On motion of Senator Tkachuk, debate adjourned.

## THE SENATE

### COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58 (1)(a), I move:

That the Standing Senate Committees on Energy, the Environment and Natural Resources; Fisheries and Oceans; and Foreign Affairs and International Trade have power to sit today at their scheduled times and at 5 p.m. in the case of Energy, Environment and Natural Resources, even though the Senate may then be sitting, and that the application of Rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

Motion agreed to.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### SECOND REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Committee on Internal Economy, Budgets and Administration (committee budgets—legislation), presented in the Senate on December 6, 2007.—(*Honourable Senator Furey*)

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Honourable senators, on behalf of Senator Furey, I move the adoption of this report.

Motion agreed to and report adopted.

## ABORIGINAL PEOPLES

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY OF FEDERAL GOVERNMENT RESPONSIBILITIES TO FIRST NATIONS, INUIT AND METIS PEOPLES— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Aboriginal Peoples (budget—study on other matters generally relating to the Aboriginal Peoples of Canada—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator St. Germain, P.C.*)

**Hon. Nick G. Sibbeston:** Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

## AGRICULTURE AND FORESTRY

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON RURAL POVERTY—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Agriculture and Forestry (budget—study on rural poverty in Canada—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Fairbairn, P.C.*)

**Hon. Joyce Fairbairn:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON PRESENT STATE AND FUTURE OF AGRICULTURE AND FORESTRY— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Agriculture and Forestry (budget—study on the present state and the future of



agriculture and forestry in Canada—power to hire staff), presented in the Senate on December 6, 2007.—(*Honourable Senator Fairbairn, P.C.*)

**Hon. Joyce Fairbairn:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

## BANKING, TRADE AND COMMERCE

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON ISSUES DEALING WITH INTERPROVINCIAL BARRIERS TO TRADE—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Banking, Trade and Commerce (budget—study on interprovincial barriers to trade—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Angus*)

**Hon. W. David Angus:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON PRESENT STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Banking, Trade and Commerce (budget—study on domestic and international financial system—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Angus*)

**Hon. W. David Angus:** Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON ISSUES RELATED TO MANDATE—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—study on emerging issues related to its mandate—power to hire staff), presented in the Senate on December 6, 2007.—(*Honourable Senator Banks*)

**Hon. Tommy Banks:** Honourable senators, I move the adoption of this report.

Motion agreed to and report adopted.

## FOREIGN AFFAIRS AND INTERNATIONAL TRADE

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON ISSUES RELATED TO FOREIGN RELATIONS—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Foreign Affairs and International Trade (budget—study to examine such issues that may arise from time to time relating to foreign relations generally—power to hire staff), presented in the Senate on December 6, 2007.—(*Honourable Senator Di Nino*)

**Hon. Consiglio Di Nino:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

## NATIONAL SECURITY AND DEFENCE

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON NATIONAL SECURITY POLICY—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on National Security and Defence (budget—study on the national security policy of Canada—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Kenny*)

**Hon. Colin Kenny:** Honourable senators, I move the adoption of the second report of the Standing Senate Committee on National Security and Defence.

Motion agreed to and report adopted.

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON VETERANS' SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTER—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on National Security and Defence (budget—study on Veterans Affairs—power to hire staff and to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Day*)

**Hon. Joseph Day:** Honourable senators, I move the adoption of this report, which consists of the budget of the Subcommittee on Veterans Affairs.

Motion agreed to and report adopted.

## RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

### BUDGET—FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (budget—study on Aboriginal languages—power to travel), presented in the Senate on December 6, 2007.—(*Honourable Senator Keon*)

**Hon. Wilbert J. Keon:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON CURRENT SOCIAL ISSUES OF LARGE CITIES—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on cities—power to hire staff), presented in the Senate on December 6, 2007.—(*Honourable Senator Keon*)

**Hon. Wilbert J. Keon:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

[Translation]

## TRANSPORT AND COMMUNICATIONS

### BUDGET AND AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON CONTAINERIZED FREIGHT TRAFFIC—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Transport and Communications (*budget—study on the examination of containerized freight traffic handled by Canada's ports—power to hire staff and to travel*), presented in the Senate on December 6, 2007.—(*Honourable Senator Bacon*)

**Hon. Lise Bacon:** Honourable senators, I move the adoption of the report standing in my name.

Motion agreed to and report adopted.

• (1620)

[English]

## STUDY ON MATTERS RELATING TO AFRICA

### MOTION TO ADOPT REPORT OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE COMMITTEE AND REQUEST GOVERNMENT RESPONSE—SPEAKER'S RULING—ORDER DISCHARGED

On the Order:

Resuming debate on the motion of the Honourable Senator Stollery, seconded by the Honourable Senator Corbin:

That the seventh report of the Standing Senate Committee on Foreign Affairs and International Trade entitled *Overcoming 40 Years Of Failure: A New Road Map For Sub-Saharan Africa*, tabled in the Senate on February 15, 2007 during the First Session of the Thirty-ninth Parliament, be adopted and that, pursuant to

rule 131(2), the Senate request a complete and detailed response from the government, with the Minister of Foreign Affairs, the Minister of International Trade, the Minister of International Cooperation and the Minister of National Defence being identified as Ministers responsible for responding to the report.—(*Speaker's Ruling*)

**The Hon. the Speaker:** Honourable senators, on Thursday, November 29, when the Senate had reached the Notice Paper, Senator Carstairs raised a point of order to challenge the propriety of a motion moved by Senator Stollery. This motion sought to adopt the report of the Standing Senate Committee on Foreign Affairs and International Trade on Sub-Saharan Africa, tabled in the last session, and to request a response from the government in accordance with rule 131(2).

[Translation]

Senator Carstairs warned that the motion of Senator Stollery posed some serious problems. This was because the report proposed for adoption was not actually before the Senate, since it had died with the prorogation of the previous session. In any debate, she argued, it would not be possible to amend the contents of the report. If the report were to be considered revived through motions like this, Senator Carstairs asked whether it might be possible to do the same with reports from ten or fifteen years ago.

[English]

After this initial intervention, several other Senators spoke to the point of order. Senator Cools noted that the Senate did not have cognizance of the report in question as it was not a report of the current session produced by a committee in this session. Senator Corbin, on the other hand, recounted how the Standing Senate Committee on Foreign Affairs and International Trade had agreed at its first meeting to mandate Senator Stollery to propose this motion, an account subsequently corroborated by Senator Di Nino. When he spoke, Senator Stollery explained how, once he had the mandate from the committee, his motion was prepared in light of a previous case.

[Translation]

In her intervention, Senator Fraser proposed a possible solution to the specific problem raised in the point of order. The senator suggested that a motion might be phrased to reference the report of the last session without seeking its adoption, and then solicit a statement from the government with respect to it.

[English]

In considering this issue, it is essential to underscore that a committee report that has not been adopted by the Senate is exactly that, a report of a committee to the Senate. A report only becomes a report of the Senate if and when it is adopted. Except in the case of a report on a bill without amendments, which is automatically adopted under rule 97(4), adoption gives the Senate the opportunity to debate and possibly amend a report. As Senators know, under rule 97(3) a tabled report does not have to be moved for adoption, but adoption is a necessary step for requesting a government response under rule 131(2).

[Translation]

The issues in this point of order are complex. Indeed in certain respects it recalls discussions that took place at the end of last session on the meaning and operation of rule 131(2). In

considering the current point of order, it is helpful to begin by addressing the fundamental question of whether business from a previous session can be reinstated or revived. Practices in the Senate, in the Commons, in the provinces, and in the Parliament at Westminster make it clear that business can indeed be revived or reinstated from a previous session, at least within the same Parliament. This is done by a clear and deliberate decision, either by adopting a motion or by establishing provisions in Rules or Standing Orders.

[English]

This in no way reduces the significance and impact of prorogation. All business then before a House of Parliament dies at prorogation. With reinstatement or revival, the House exercises its fundamental control over its own affairs and decides how it will conduct new business in the new session. In the Senate, we have had many motions relating to committee work that have had the effect of continuing studies and referring work and evidence from past sessions. We have also had motions to request government responses to reports adopted in a previous session or even a previous Parliament. In the Commons, all non-government public business — both bills and motions — is reinstated in the following session of the same Parliament. In addition, government business is frequently reinstated by House order. The Commons also provides for the automatic continuation of requests for papers, including requests for government responses to committee reports. Finally, in some provinces and at Westminster, various practices exist to allow the reinstatement of bills.

[Translation]

As senators know, a proposal is currently before the house to allow for the reinstatement of bills. While this proposal has not been adopted, it is nonetheless competent for the Senate to revive or reinstate other types of business, such as committee business, if a clear decision to that effect is made. This respects the competing principles of the prerogative of the Crown to prorogue Parliament and the fundamental freedom of parliamentary Houses to structure their business as they see fit.

[English]

In reviewing the issues raised by Senator Carstairs and others, I noted a relevant ruling, given by my distinguished predecessor on February 19, 2004, which dealt with two similar points of order. The first concerned a motion, in a new session, to request a government response to a report adopted during the preceding session. That motion was held to be in order, and the motion was subsequently adopted. Since then, there have been five such motions adopted, including two earlier in this session. Given that such motions request responses to previously adopted reports, this practice is acceptable.

The second point of order raised in 2004 dealt with a motion both to adopt a report from a previous session and to request a government response. The ruling found the motion to be in order. Until now, this had been the only instance of this kind of motion. The motion moved by Senator Stollery paralleled the 2004 example, and, accordingly, it was properly drafted in light of that ruling.

This said, Senator Carstairs' point of order raises issues that were not fully addressed in the 2004 case. In particular, she asked how far into the past such motions can reach, and, equally

important, whether the report proposed for adoption by the Senate can be amended.

[Translation]

Such uncertainty is not conducive to orderly proceedings in the Senate. My analysis of the situation suggests that the motion under consideration would not necessarily allow the Senate to amend the report. I find the indirect closing off of one important element of free and full debate unacceptable, in this case. The objection about how far back in time such motions can go is also real. In light of these problems, it would be more appropriate to find a different approach to reach the objective sought by Senator Stollery in his motion.

[English]

An additional difficulty with the motion is that rule 131(2) clearly requires that the report in question be from a committee. The question is, therefore, whether this report from a past session, cited in the current session, is, truly, a report of a committee of this session. There was no order of reference in the current session, and no report has been tabled or presented. As noted, prorogation does have real practical effects in Parliament, and the report should not be seen as a report of this session to which rule 131(2) could apply. Because the motion in question invokes rule 131(2), it must fulfill the conditions stipulated in that rule.

• (1630)

[Translation]

What is needed, therefore, is a clear and direct procedure that unambiguously places the report before the Senate in the current session and allows senators ample opportunity for debate. Several such processes seem to be available. As already noted, committees often seek to revive studies from the previous session and to have the relevant papers and evidence referred back to them. A senator could, therefore, move a motion, on notice, to authorize the Standing Senate Committee on Foreign Affairs and International Trade to study issues relating to Africa, and to refer the papers, evidence, and work from last session back to the committee. If this motion were adopted by the Senate, the committee would then be seized of all that information. It could adopt a new report, identical to the old one, or evaluate whether some of the previous work should be adjusted. The new report could then be tabled in the current session and treated like any other tabled report.

[English]

A second approach might be to follow the process outlined in citation 890 of the sixth edition of *Beauchesne's*. Although the 2004 ruling referred to the citation, it appears to me that its meaning was not fully followed. Taking into account the citation and Senate practice, a motion might be moved, on notice, to place a report from a previous session on the Orders of the Day for consideration at the next sitting. This type of preliminary motion would effectively, and clearly, reinstate or revive the report of the previous session. It might then be treated as a report in the current session, subject to possible amendment, and also allow for a motion to adopt and request a government response.

While these approaches may be more time-consuming, they have the great advantage of allowing the fullest possible opportunity for debate and discussion. They avoid the pitfall of forcing the Senate to accept or reject entirely a report from the previous session without the possibility of amendment.

[Translation]

There is yet another viable approach that might be available, along the lines suggested by Senator Fraser. As already stated, the report addressed by the motion in question does not fall under rule 131(2), being a report from a previous session that was neither adopted nor revived. Consequently, the Senate is not bound by the processes of the rule. It might be possible, therefore, for a senator to move, on notice, a motion simply requesting a government response to the committee report of the previous session, without asking for its adoption by the Senate. Since the Senate would not actually adopt the report, it would remain simply a report of the committee, not of the Senate. This could be a third approach.

[English]

As a final point relating to government responses and prorogation, I would like to take this opportunity to clarify that, because the Senate does not have rules providing that requests for government responses are automatically revived in a new session, such requests do, in fact, die at prorogation. If a response is still desired in the new session, it must be renewed by motion, with a new period of 150 days, if the motion is adopted. This is different from the House of Commons, which does have a Standing Order allowing requests for government responses to committee reports to survive in a new session of the same Parliament. In the Senate, the government does, of course, have the option of tabling on its own initiative a response to a committee report from a previous session, under the authority of rule 28(3). This has occurred several times during the current session. Such responses are not, however, made under rule 131, and are not automatically referred to committee under rule 131(4).

[Translation]

This point of order, like the discussion late in the last session, shows that the process for requesting government responses has many unexpected complexities. The Standing Committee on Rules, Procedures and the Rights of Parliament may, therefore, wish to consider revisiting the entire issue in detail to provide needed clarification. The committee could also examine how far back in time such requests can go. While recognizing the importance of this aspect of the issue, a decision by the Speaker at this time would be highly speculative, and a solution requires detailed consideration. Let me emphasize that any decision by the committee to undertake such work belongs not to me, as Speaker, but to the committee itself, under rule 86(1)(f)(i), or to the Senate, if it gives the committee a specific order of reference.

[English]

As it stands, if a report was adopted in a past session or a past Parliament, a government response can be requested under rule 131(2), and must be renewed in each subsequent session, whether in the same Parliament or a new one. If, however, the report was not adopted, a motion such as this one is not adequate, given the factors raised in discussion of the point of

order. However, other means are available to achieve the objective of Senator Stollery's motion.

Debate on the current motion cannot proceed, and it is to be discharged from the Order Paper.

## THE SENATE

### MOTION TO URGE GOVERNOR-IN-COUNCIL TO PREPARE REFERENDUM ON WHETHER THE SENATE SHOULD BE ABOLISHED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Segal, seconded by the Honourable Senator Keon:

WHEREAS the Canadian public has never been consulted on the structure of its government (Crown, Senate and House of Commons)

AND WHEREAS there has never been a clear and precise expression by the Canadian public on the legitimacy of the Upper House since the constitutional agreement establishing its existence

AND WHEREAS a clear and concise opinion might be obtained by putting the question directly to the electors by means of a referendum

THAT the Senate urge the Governor in Council to obtain by means of a referendum, pursuant to section 3 of the *Referendum Act*, the opinion of the electors of Canada on whether the Senate should be abolished; and

THAT a message be sent to the House of Commons requesting that House to unite with the Senate for the above purpose.—(Honourable Senator Tardif)

**Hon. Sharon Carstairs:** Honourable senators, I would like to speak on this motion of Senator Segal with respect to a referendum on the Senate.

Honourable senators, in my view, the most regressive thing a politician can do is to raise an expectation that is not deliverable. This is exactly what this motion proposes.

Canadians would be asked to vote on a referendum to abolish the Senate; but the expectation in the minds of most Canadians would be that if the majority of Canadians voted to abolish the Senate, then the Senate would indeed be abolished. However, this would not be the case.

The Senate could not be abolished without a constitutional amendment, and we all know how difficult such an amendment would be. Therefore, an expectation that has been set up in the minds of the citizens of this country is dashed, resulting in even greater disillusionment of the citizenry and further cynicism.

This motion by Senator Segal goes one step further in the development of cynicism because the person who proposes the motion does not even believe in his own motion. He has indicated that he would vote no. For me, this proposal is the ultimate in cynicism. Therefore, I believe we should vote a resounding no to this motion.

[The Hon. the Speaker]

There is only one solution to Senate reform. That is for the Prime Minister of this country to show leadership. Leadership on behalf of the Prime Minister would manifest itself in calling a first ministers meeting of all the premiers of the provinces and territories to discuss Senate reform because without their support, a constitutional amendment is not possible.

It is when they have come to an agreement that a referendum should occur. The people of Canada should be given a proposal on Senate reform and then given the right to vote it up or down.

I know that the reaction of the honourable senator — because I watched him in response to earlier speeches — who has proposed this motion is that we have tried this approach but it did not work. For the sake of historical accuracy, that is not true.

• (1640)

Canadians have never been given the option to vote only on Senate reform. They have had a proposal that included many aspects of constitutional reform and voters voted against far more than one of the propositions. Yes, some voted against Senate reform but far more voted against changes to electoral reform, in particular in British Columbia; others voted for the further decentralization of the nation, which was certainly my vote; still others because it did not go far enough; and last but not least, many voted no, because they did not like the government of the day, which proposed a massive change in the way Canada was to be governed.

Canadians did not reject Senate reform. They rejected a massive package of reforms on the way Canada was to be governed. We do not know how they would have voted had there been a choice only on Senate reform. They deserve the right to make a choice about this institution and this institution alone.

What are some of the questions that the premiers and the Prime Minister should discuss? The first should be the distribution of seats. Should we go to the American model and recognize all provinces as equal and, therefore, entitled to exactly the same number of seats? Should they re-examine our present regional representation and question whether the numbers need some adjustment? I favour the second option.

Clearly, the west suffers a significant disadvantage. I would recognize British Columbia as a new region and allow their number of seats to grow gradually to the full 24 seats for their region when the population of British Columbia equals the population of the region of Quebec. I would make a further adjustment that would allow the Prairie region to grow to 30 seats under a provision that would state, if a region represented more than one province, then that region would have 30 seats, thereby equalizing the seats of the Atlantic and the Prairie regions.

As to the elected nature of the Senate, a debate must begin with a discussion on how powerful they want the Senate of Canada to be. If senators in Canada are to be elected in a manner similar to members of the House of Commons, then the discussion of powers is critical. Do we want a chamber of sober second thought or do we want a chamber more powerful than the House of Commons? There are 110 seats in the Province of Ontario — the present proposal, and 24 senators. Which parliamentarians will be more powerful? I suggest, honourable senators, that the 24 senators, if elected, will be more powerful than 110 members

of Parliament. I favour an indirect election process with names coming forward from the legislatures of the provinces and territories. The number of names must reflect the gender and ethnic diversity of the province and, therefore, the numbers proposed must exceed the number of vacancies. The names should be vetted through the legislatures and should require the support of all parties represented in the legislatures. The Prime Minister would then have the choice to select from these names to ensure broad representation in this place.

This chamber has been effective but there is always room for improvement. I would like the premiers and the Prime Minister to discuss the proposition of non-renewable terms, and 12 to 13 years is appropriate.

Other issues require debate. Should senators all sit as independent senators with no caucus loyalty? Should the Speaker of the Senate be elected? Should the Senate be totally gender balanced? Should the Senate have a special role to protect linguistic minorities? Should higher votes be required for legislation that limits minority rights? Should the Senate have quota numbers with respect to First Nations people? Many other questions probably should be debated and examined. I have given a few this afternoon and I welcome contributions to the debate from all other honourable senators in this chamber.

**Hon. Hugh Segal:** Would the honourable senator take a question?

**Senator Carstairs:** Yes.

**Senator Segal:** I want to ensure that I do not misunderstand the purport of the honourable senator's words, setting aside all consideration of cynicism. It is clear from what the honourable senator has said, and please correct me if I am in any way unfair, that it is far better for the first ministers to meet and discuss the future of the Senate that excludes the prior involvement of the people of Canada in a referendum where they could express their view about whether we need the Senate to begin with. It is not an unreasonable position because there are good people on both sides of this debate. I want to be clear that it is the proposition that the honourable senator shared with the rest of this place.

**Senator Carstairs:** That is an interesting proposition because it is not what the honourable senator asked. Rather, he asked whether the Senate should be abolished. That is the motion he has put before the house. Perhaps if the honourable senator had put the question that he now suggests — do we need a Senate at all — it would give rise to an entirely different debate. That is not the question. The question is: Should there be a proposition, yes or no, that the Senate be abolished? That is deeply regrettable. I know he has indicated that should it be a significant debate, money should be given to both sides. With the greatest respect to most Canadians, they know little about the Senate of Canada. They do not even know a great deal about the House of Commons. That does not mean that we should not engage them in a debate but not a debate that has such an open-ended question as the honourable senator has proposed: yes, no; abolish, do not abolish.

**Senator Segal:** Honourable senators, this will be my final question because I do not want to be unfair in the use of time. It was certainly my intent in the wording of the motion that sits before all honourable senators to have this house express the

desire for a referendum on the question of abolition. I indicated clearly when I moved the motion that I would be opposed to abolition and that the purpose of the proposal was to have a referendum on the matter. I want to be clear, and to ensure that the honourable senator from Manitoba understands, that my resolution means that the Senate should be abolished, not that there should be a referendum on the matter first in which she would have her views and I would have mine. It is not a hollow sophistry. Inviting people to express their views prior to negotiation is a long-standing tradition in places like Switzerland and other democracies, and it struck me that Canadians are mature enough to reflect on that matter.

**Senator Carstairs:** Perhaps if the honourable senator had proposed a series of options then I might have looked at his proposal more favourably. However, he has given only one option, yes or no.

**Senator Segal:** I trust the honourable senator does not suggest that her perspective is closed to the notion of making amendments to the motion. I know of no one on this side who has indicated any resistance to creative amendments that might be offered by all sides to the motion before the house.

On motion of Senator Tardif, debate adjourned.

[Translation]

#### BUSINESS OF THE SENATE

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, I move:

That the Senate do now adjourn during pleasure to reassemble at the call of the chair with a fifteen minute bell; and

That the Speaker not see the clock at 6 p.m. and that rule 13(1) be suspended for today.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**An Hon. Senator:** We would like an explanation.

**The Hon. the Speaker:** Senator Comeau, can you provide an explanation?

• (1650)

**Senator Comeau:** Honourable senators, we are waiting for an important bill from the House of Commons, Bill C-28, the budget bill, which should arrive in the Senate sometime around 7 p.m., as soon as the vote has been taken in the other place.

If the House of Commons passes the bill, we will be able to introduce it this evening and possibly move forward on it.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned during pleasure.

• (1740)

[English]

The sitting of the Senate was resumed.

**Senator Comeau:** Honourable senators, it was expected that Bill C-28 would be received from the other place for first reading in the Senate today. Unfortunately, the bill has been delayed because the members of the New Democratic Party have decided to prolong the process in the House of Commons. However, we appreciate the positive way in which the official opposition in the other place approached Bill C-28, constructively and with the usual vigour shown in their approach to other government bills.

I also wish to state how much I appreciate the positive manner with which we have been able to dialogue on the progress of this bill to date. I have had tremendous cooperation from the other side on the way in which we will approach the bill once it arrives. Unfortunately, that will not happen tonight, which means that the Deputy Leader of the Opposition in the Senate and I will likely have to re-sharpen our pencils.

The Senate adjourned until Wednesday, December 12, 2007, at 1:30 p.m.

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