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OFFICIAL REPORT
(HANSARD)

Monday, March 25, 2002

THE HONOURABLE DAN HAYS
SPEAKER

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(Daily index of proceedings appears at back of this issue.)

OFFICIAL REPORT

CORRECTION

[*Translation*]

Hon. Eymard G. Corbin: Honourable senators, I wish to make a correction to the *Debates of the Senate* for March 21, 2002.

[*English*]

Honourable senators, I believe that I also have Senator Carstairs' accord to make a correction on her behalf. In English, in a question I put to Senator Carstairs on March 21, 2002, on page 2492 of Hansard, I said:

> Of course, I do not want to pick a fight with Senator Carney, but I profoundly disagree with her views on a bill we passed before Christmas.

[*Translation*]

This was translated into French as follows:

> Bien entendu, je ne veux pas m'en prendre au sénateur Carney, mais je suis tout à fait d'accord avec son point de vue [...]

[*English*]

That is diametrically opposed to what I said in the English. The same thing happened to Senator Carstairs in her response to my question. Indeed, on the same page, she said:

> The Government of Canada totally disagrees with the Council of Canadians.

[*Translation*]

This was translated into French as follows:

> Le gouvernement du Canada est tout à fait d'accord avec le Conseil des Canadiens.

[*English*]

I do not know if they use robots in the translation office, but mistakes like this are unforgivable.

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THE SENATE

Monday, March 25, 2002

The Senate met at 4:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

WORLD TUBERCULOSIS DAY

Hon. Yves Morin: Honourable senators, yesterday was World Tuberculosis Day, a day to take a deep breath and reflect on the fact that tuberculosis has taken more lives than any other single infection in history.

Sir Wilfrid Laurier suffered the effects of tuberculosis throughout his career and eventually succumbed to a complication of the disease. Canadian physician Dr. Norman Bethune suffered from the same infection. In fact, for the first three decades of our history, tuberculosis was the number one killer of Canadians.

[*Translation*]

I would like to pay tribute to all the pioneers, the physicians and nurses, who, in the days before antibiotics, struggled valiantly and effectively against this disease, which was so prevalent among the disadvantaged. Remarkable contributions were made by many, including the medico-social team that practised in Trois-Rivières between 1925 and 1970, comprised of Dr. Hervé Beaudoin, a pulmonary disease specialist, and public health nurses Blanche Teasdale and Jeanne Lamothe.

[*English*]

However, tuberculosis is not a disease of the past — not in Canada, where about 2,000 new cases are reported each year and where the incidence among the Aboriginal population is unacceptably high, and not elsewhere, where almost 2 billion people, one third of the world's population, are now infected with the tuberculosis bacteria.

At the G8 summit in Japan, our Prime Minister made a commitment on behalf of Canada to help step up the fight against infectious disease, especially tuberculosis. Research plays a key role in the fight against this disease. Scientists associated with the CIHR Institute of Infection and Immunity, under the able direction of Dr. Bhagirath Singh from the University of Western Ontario, are working to find out how the tuberculosis bacterium becomes drug resistant and what genes control the spread of the disease.

With the sequencing of this microbe's genome, new research opportunities are emerging in finding new drugs and vaccines against tuberculosis. In fact, researchers associated with the institute have received over $4 million for tuberculosis research in the last three years.

[*Translation*]

Although much remains to be done, this scientific research once again demonstrates that Canada is at the leading edge as far as putting science at the service of the developing countries is concerned. Thank you for your kind attention, honourable senators.

[*English*]

NOVA SCOTIA

GREENWOOD—CLOSE OUT OF 434 BLUENOSE SQUADRON

Hon. Wilfred P. Moore: Honourable senators, yesterday I attended the ceremony commemorating the close out of 434 Bluenose Squadron, Combat Support, at 14 Wing, Greenwood, Nova Scotia. The ceremony was overseen by Her Honour Myra A. Freeman, Lieutenant-Governor of Nova Scotia, His Royal Highness The Prince Michael of Kent, Vice Chief of Defence, Staff Lieutenant-General G.E.C. Macdonald and Chief of the Air Staff, Lieutenant-General L.C. Campbell.

This historic squadron was formed at Tholthorpe, England, on 13 June, 1943, as a bomber unit flying Halifax Vs and then Lancasters. During World War II, the squadron flew some 2,600 combat sorties, dropped 10,575 tonnes of bombs and mines and 68 crewmembers made the ultimate sacrifice. The squadron's original complement of personnel contained a large number of Maritimers, and thus it was an obvious choice when the squadron adopted the schooner *Bluenose* as both its crest and nickname. Besides acquiring 150 individual declarations, the Bluenosers received 11 battle honours.

In addition to the Halifax and Lancaster aircraft, 434 has flown the F-86 Sabre, CF-104 Starfighter, CF-5 Freedom Fighter, C-144 Challenger and the T-33 Silver Star, the mighty Thunderbird. The tail fins of these aircraft have all borne the image of *Bluenose*.

The exemplary service of 434 Bluenose Squadron has made a significant contribution to the pursuit and protection of the precious freedoms we enjoy as a democratic people. Canada shall always be in their debt. We shall never forget. In the words of Colonel G.M.A. Morey, 14 Wing Commander:

> Like *Bluenose*, these schooners of the sky represent excellence, and they are true champions.

The motto of this squadron is "We Conquer in the Heights." They have certainly done that. Moreover, they have conquered our hearts.

The squadron has been disbanded three times in the past. It will be disbanded again on 15 July, 2002. However, we should keep a lookout because, I am sure, this historic unit will again be reactivated in the future.

To Lieutenant-Colonel J.R. Turner, Commanding Officer of 434 Bluenose Squadron, Combat Support, and the men and women of his crew, we say "Three Cheers!" for a job well done, and we wish the skipper and his Bluenosers the very best of health and happiness in the future.

INTERNATIONAL TRADE

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT

Hon. Gerry St. Germain: Honourable senators, British Columbia is facing an unmitigated disaster as a result of tariffs imposed on the softwood lumber industry. I am sure it is no surprise to anyone that someone like myself, who represents that region, would rise today to speak about the horror stories that are taking place within British Columbia at the present time as a result of the trade differences with the U.S.

I believe, honourable senators, now is not the time to be critical or make rash statements about our American neighbours to the south because they still are our largest and best customer. Somehow, we must find a resolution to this dilemma we are facing.

Honourable senators, the government has taken a certain position, and I believe that this issue rises above partisanship as it affects the entire country, especially the central and western provinces.

•(1610)

It is time for the government and this side to put partisanship aside and seek a resolution to this issue. We must think of new methods to achieve resolution because the methods that we have used to date have obviously failed.

Honourable senators, I would urge the minister, who is present in the chamber today, to present alternative suggestions to cabinet. We have made some suggestions in the past. I am not saying they are cast in stone, but it is time for us to find creative ways to deal with the horrific situation that exists on the West Coast. As an example, this new tariff imposed by the U.S. could potentially rule out the possibility of Doman Industries staying in business, a company that employs 4,000 people. That in itself creates an urgency of huge dimension for the province of British Columbia and for the whole country.

ROUTINE PROCEEDINGS

FOREIGN AFFAIRS

BUDGET—STUDY ON EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE—REPORT OF COMMITTEE PRESENTED

Hon. Peter A. Stollery, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

[Senator Moore]

Monday, March 25, 2002

The Standing Senate Committee on Foreign Affairs has the honour to present its

TWELFTH REPORT

Your Committee was authorized by the Senate, on Thursday, March 1st, 2001, in accordance with rule 86 (1)*h*), to examine and report on emerging political, social, economic and security developments in Russia and Ukraine; Canada's policy and interests in the region; and other related matters.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, 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,

PETER A. STOLLERY
Chairman

(*For text of budget, see today's* Journals of the Senate, *p. 1377.)*

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

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

QUESTION PERIOD

INTERNATIONAL TRADE

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT

Hon. Gerry St. Germain: Honourable senators, my question is for the Leader of the Government in the Senate. Further to my earlier statement, it is my understanding that it will be approximately 315 days to one year before a NAFTA application can be made in respect of the 32 per cent tariff that has been imposed on our softwood lumber. British Columbia has lost 20,000 jobs to date. Pink slips were handed out last Friday, and earlier, and that is continuing this week, to my understanding.

Has the government given some thought to a process that will provide relief? I understand that relief could be dangerous because it could be construed as a subsidy that could further exacerbate the difficult negotiations with the U.S. However, can we give any hope to British Columbians who are being so adversely affected in every community in B.C. and to other Canadians so affected across the country?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for raising the issue in both his statement and his question. The issue of the softwood lumber tariff clearly affects many in this country, but more particularly those in the province of British Columbia. The duties announced by the Americans last Friday of 19.34 per cent in countervails and 9.67 per cent on anti-dumping, for a total of 29.01 per cent, were best expressed by the Honourable Pierre Pettigrew when he said that they were obscene. That is indeed the way many Canadians feel.

Canadians do not believe that they have been treated fairly in this particular instance; they have been let down by the most senior member of the administration, who directed that a deal be worked out by last Friday. That deal, clearly, was not worked out due to the pressure imposed by the industry south of the border.

As to the honourable senator's specific question, the government will need to assess the situation and the impact of any action, which the honourable senator has already indicated there might be, before it would be in a position to respond.

Senator St. Germain: Honourable senators, as the share prices drop for our forest companies and our devalued dollar stares us head on, it really could create absolute havoc. American corporations could come here with their American dollars and convert them to Canadian dollars to purchase below wholesale price, which could further exacerbate and erode Canadian control of our forest companies. Does the honourable senator have a comment on that?

Senator Carstairs: Clearly, that is always of concern in the present economic circumstance. Hopefully the situation will be monitored carefully.

In terms of the overall impacts, we know that they will be severe, particularly in the province of British Columbia but not only in B.C. It leads us to wonder just how valuable the NAFTA agreement is, considering that we have won several times before similar panels. The government will, however, pursue a further NAFTA panel, as well as WTO challenges.

Senator St. Germain: The honourable senator speaks of the obscenity of the decision, and there is no question that the entire industry and the entire country are in shock. Is serious consideration being given to thinking "outside of the box" and possibly using an envoy to improve the status of the negotiations? When I raised this thought before, I was serious about it. During the free trade negotiations in the past, when we were in government, I played a small role in the process and dealt with others who were involved.

•(1620)

There were times during the negotiations when people outside of the political sphere were brought in because they could exercise a certain amount of influence that politicians could not. I ask the minister to revisit that particular suggestion. I am thinking of people like Ken Taylor, a Canadian who in the eyes of the Americans is a true hero because of his role in Iran in years past, or other people of that nature who could have a true impact on the American administration and move this issue to the front burner.

Senator Carstairs: Honourable senators, it is very difficult to think of possible envoys higher than the Prime Minister of Canada and the President of the United States, both of whom, less than two weeks ago, made a statement in the Rose Garden that they would work together to bring about an agreement as of last Friday. Clearly, that did not happen because the industry in the United States, supported by, I understand, up to 51 senators, signed agreements that they would not come to a reasonable and rational decision on this issue.

However, I think the minister has been extremely creative and cooperative up to this point. It is the first time I have seen provincial ministers and the federal minister working as cooperatively together as they did in Washington last week. If Senator St. Germain thinks that another idea and the concept of an envoy from outside the political arena would be useful, I would be pleased to take that suggestion to the cabinet table.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, I would like us to start with Items Nos. 1, 2 and 3 under Bills, that is, Bills C-39, C-30 and C-35, followed by Item No. 2 under Committee Reports, before returning to the order set out in the Order Paper.

[*English*]

YUKON BILL

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Christensen, seconded by the Honourable Senator Léger, for the third reading of Bill C-39, to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I mentioned on Thursday, when I took the adjournment of the debate on this matter, that I wanted to review the intervention by our colleague Senator Watt, which I have been studying. Senator Watt raises some serious constitutional questions about Bill C-39. I hope to be prepared tomorrow to speak in depth on the matter. With your permission, I move to stand the item.

Hon. Sharon Carstairs (Leader of the Government): I am quite prepared to stand the matter in the name of Senator Kinsella, but first I should like to put some remarks on the record.

Honourable senators, Bill C-39, the new Yukon Act, is a result of several years of consultation and negotiation by the federal government, the Yukon government and the First Nations of the Yukon.

It is important for honourable senators to note that all 14 Yukon First Nations, the Kaska Nation, the Yukon government and the federal government negotiated the Devolution Transfer Agreement which sets out terms of the transfer of land and resource management powers from the federal government to the Yukon government. The same parties also worked together on the development of Bill C-39.

The bill and the agreement incorporate the best efforts of all parties to meet the interests of all Yukoners, both Aboriginal and non-Aboriginal. Furthermore, the bill reflects the political evolution of responsible and accountable public government in the Yukon.

As honourable senators know, Bill C-39 will transfer land and resource management powers to the Yukon government. It will thus provide Yukoners with decision-making powers like those exercised by citizens in the provinces. It will further modernize the legislative framework underlying the territory's political institutions. This bill is long overdue.

I would like to take this opportunity this afternoon to address a number of the concerns that Senator Watt has raised in this chamber with respect to Bill C-39. Senator Watt raised a question as to whether Bill C-39 is in conflict with the Constitution. As much as I respect the views of my honourable colleague, in this instance I believe he is wrong. Bill C-39, taken together with the Devolution Transfer Agreement, is not inconsistent with either the Rupert's Land and North-Western Territory Order of 1870, or with section 35 of the Constitution Act, 1982.

As Senator Watt noted, the 1870 order is the subject matter of outstanding litigation. Therefore, the precise scope and legal effect of the 1870 order is not a clear and settled matter. Yet, if one assumes that the 1870 order does provide any protection for the rights of Aboriginal peoples — and that is a matter that is yet to be decided — the government's view is that the protection does not go beyond the protection provided by section 35 of the Constitution Act, 1982.

Furthermore, as honourable senators are aware, this protection is not absolute. The courts have clearly recognized that governments may take measures that can infringe upon existing Aboriginal rights or title, as long as it can be justified in accordance with the legal test established by the courts. This way, legitimate government objectives can be reconciled with existing Aboriginal rights and title.

Bill C-39 does not by itself infringe on any Aboriginal right or title. It only provides for a transfer of administrative responsibility in relation to Crown land and natural resources from one government body to another — more specifically, from the Department of Indian Affairs and Northern Development to the Yukon government.

Senator Watt, in his comments on Bill C-39, referred to the Yukon government as a third party. Honourable senators, the Yukon government is a public government, responsible to its constituents, Aboriginal and non-Aboriginal alike. It is a government like other governments of Canada, legally bound by our Constitution.

Through this bill and the Devolution Transfer Agreement, the only thing that will change from what is the case now is that a different creature of Parliament, the Yukon government, will now be responsible for managing that land and those resources, thus giving to the Yukon what has been given to other provinces. However, the title to the land and resources will remain vested in the Crown in right of Canada. This means that, after the Yukon government assumes land and resource management responsibilities from the federal government under Bill C-39, the Yukon government will be placed in the same position as the federal government in carrying out those responsibilities. In other words, if the Yukon government takes measures which can be said to be infringing upon any Aboriginal right or title, it will have to justify that action in accordance with the legal test established by the courts in exactly the same way as the federal government is required to do.

Recognizing this, the Yukon government committed itself, in the Devolution Transfer Agreement, to involve and consult First Nations, including First Nations with outstanding land claims, to ensure that their rights and interests are properly taken into account when managing land and resources in the Yukon.

•(1630)

Honourable senators, during the negotiation process, all parties — First Nations, the Yukon government and federal government representatives — considered the idea of transferring land and resource management responsibilities to the Yukon on a piecemeal basis as outstanding land claims were settled. However, such an approach would not be practical. We can all appreciate the inefficiency, fractured management and regulatory regimes, uncertain business environment and, of course, financial and economic duplication that would be caused as a result of such an approach. Nor is such an approach necessary. Working together, the parties proceeded to develop measures to protect the interests of First Nations and particularly the interests of First Nations without settled claims. These provisions are included in the Devolution Transfer Agreement and in Bill C-39.

Honourable senators, balancing economic and other developmental benefits for Yukoners with a need to continue to find ways to complete land claims and self-government agreements is a challenge that the federal government and the Yukon government already face in carrying out land and resource management responsibilities in the Yukon. It is a challenge the Yukon government will face to a greater extent post-devolution until all remaining land claims in the Yukon are settled. In negotiating the Devolution Transfer Agreement and developing Bill C-39, the parties to the process sought creative ways to better address the challenge. As a result of these negotiations, the agreement sets out a number of provisions to safeguard the interests of First Nations to ensure that potential risks are minimized.

Under the Devolution Transfer Agreement, all lands selected under land claims negotiations in the Yukon will be interim protected by the federal government before devolution. This protection will be continued after devolution by the Yukon government for at least five years. The Yukon government has also committed to interim protect up to 120 per cent of the land quantum that might remain to be negotiated on April 1, 2003. As a result, no new interests will be created on the lands identified to form part of these future comprehensive land claims settlements.

Furthermore, honourable senators, the Devolution Transfer Agreement and Bill C-39 provide for the federal government power to take the administration and control of lands back from the Yukon government or issue prohibition orders for the purpose of settling any remaining claims, or otherwise, for the welfare of Indians and Inuit.

Overall, therefore, through the Devolution Transfer Agreement and Bill C-39, mechanisms have been designed to protect the interests of First Nations without settled claims and to put in place decision-making processes to minimize the risk of any infringement by the Yukon government of the rights of First Nations in relation to land and resources.

Honourable senators, the passage of Bill C-39 will not affect the comprehensive land claims process. The negotiation of land claims in the Yukon will continue its own course as the preferred means to achieve reconciliation with Aboriginal rights and interests. This process will continue to be a trilateral process, just as it is today, involving First Nations and both the federal and the Yukon governments.

In this context, Bill C-39 and the Devolution Trust Agreement were designed and negotiated with the active participation of First Nations. They both take into account and reflect the objectives set out in the Constitution to reconcile legitimate objectives of governments with the existence of Aboriginal rights and title.

Bill C-39 will simply put the Yukon government in the same place the federal government is in now, without affecting the negotiation of Aboriginal land claims or in any way diminishing the rights of Aboriginal people. The Yukon government will be required to carry out its new functions in accordance with all the requirements of the Constitution, including those related to the protection of Aboriginal rights and title. Accordingly, Bill C-39 is consistent with all the protection given to Aboriginal rights and title under the Constitution, whether this protection is derived from the 1807 order or section 35 of the Constitution Act, 1982.

Honourable senators, the passage of Bill C-39 will trigger the flow of significant benefits set out in the Devolution Transfer Agreement, for all Yukoners, Aboriginal and non-Aboriginal alike. The decision-making will rest in the hands of Yukoners, where it rightfully belongs. Yukoners will decide on the nature and pace of the development of Yukon resources for the benefit of all Yukoners. The Yukon First Nations will also receive a share of the Yukon government's net fiscal benefits from resource revenues after devolution. In addition, after devolution, First Nations will benefit from continued government forest fire suppression beyond the five-year period provided for in land claim agreements and from remediation of hazardous or contaminated sites on First Nation settlement lands.

Honourable senators, Senator Watt noted the history of events leading up to where we are today. Relations between Aboriginal and non-Aboriginal people in the Yukon and, indeed in Canada overall, have left much to be desired. We all appreciate the need to learn from the mistakes made in the past and build strong partnerships in the years ahead.

Honourable senators, a major objective of both the Devolution Transfer Agreement and Bill C-39 is to further enhance constructive government-to-government relationships between First Nations government and public government in the Yukon.

As noted earlier, under the Devolution Transfer Agreement, the Yukon government has committed to consult with First Nations, particularly those First Nations that have yet to conclude their land claims, on its land and resource management policies and procedures, as a further measure to safeguard First Nations' rights and interests and to obtain the input of First Nations. The agreement also sets out Yukon government-First Nations agreements that include establishing cooperative working arrangements with First Nations in respect of developing Yukon's successor resource management legislation. The Yukon government is also committed to consulting with First Nations on any amendments to the Yukon Act that may be contemplated in the future by the federal government.

Honourable senators, the Devolution Transfer Agreement, which will come into effect when Bill C-39 is proclaimed, carefully balances the interests of all stakeholders with particular attention to the rights and interests of First Nations, especially those First Nations that have yet to conclude their land claims and self-government agreements. Bill C-39 is forward looking legislation to which the Yukoners have aspired for a long time. It is fully consistent with the Constitution of Canada. It supports our common objective of building a stronger, more prosperous nation and to further enhance the quality of life of all Canadians.

I urge all honourable senators to support this legislation.

The Hon. the Speaker: Senator Kinsella, do you wish to move adjournment?

Senator Kinsella: Yes. However, let me first thank the Honourable Leader of the Government for laying this extra information on the table. It is great to have the machinery of the government behind one to get this research.

I listened carefully; I shall read the speech carefully, and I hope to rise tomorrow.

On motion of Senator Kinsella, debate adjourned.

COURTS ADMINISTRATION SERVICE BILL

THIRD READING—DEBATE ADJOURNED

Hon. John G. Bryden moved the third reading of Bill C-30, to establish a body that provides administrative services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada, to amend the Federal Court Act, the Tax Court of Canada Act and the Judges Act, and to make related and consequential amendments to other Acts.

He said: Honourable senators, I want to say a few words about this bill at third reading. It is not my intention to repeat what I said at second reading. However, there are some matters that have come to light as a result of committee hearings and discussions that may be helpful as honourable senators consider this bill at third reading.

I will provide a quick synopsis of the bill. The bill really deals with three matters. An administrative service would be established to provide the basic administrative functioning for the four courts — the Federal Court of Appeal, the Federal Court, the Tax Court and Court Martial Appeal Court. I will return to that.

The second matter deals with the separation of the Federal Court into two distinct courts. Currently, there is a Federal Court with a trial division and an appeal division. This bill would change the administrative organization of the Federal Court to be similar to that of the superior courts of most provinces. There would be the Federal Court, trial division and the Federal Court, appeal division.

Finally, and I will come back to this in more detail, the bill confers superior court status on the judges of the Tax Court in Canada.

•(1640)

As we considered the bill in committee — indeed, as we investigated it — it became clear that this bill has been in progress and under development for a significant period of time. Part of this was as a result of a report by the Auditor General. At the request of the Minister of Justice, the Auditor General reported in 1997 that there could be considerable efficiencies and also administrative facility that would occur by having one administrative service apply to all of these basically specialized federal courts.

At second reading, the bill was sent to the Standing Senate Committee on Legal and Constitutional Affairs. The bill had a very thorough airing in that committee.

We were fortunate — and I want to put this on the record — that the chief spokesperson for the Department of Justice was Judith Bellis, who is the Senior Counsel at the Judicial Affairs Unit. In the minds of all of the committee members, she did an outstanding job. It was obvious that she knew this file very thoroughly. She was prepared to answer any and every question that came forward, and she did so succinctly and in a manner that moved our deliberations along. As someone who has, at times, been quick to criticize the officials who appear before our committees, I wanted to put this on the record.

Though some of the members of the committee may not agree with some of her positions, I do not think any one of us would have faulted her preparation and her contribution to our deliberations.

I should also like to say that the members of the committee, primarily Senators Beaudoin and Rivest, and I believe Senator Andreychuk was there for part of the time as well, gave this bill careful consideration. These senators asked very deliberate and carefully honed questions that were on point, which may be why we received direct answers.

As a matter of fact, honourable senators, we actually stopped asking questions before the chair told us to, because, to the best of my recollection, the answers had been given. The questions that we had asked had been answered as completely as possible.

In the development of the bill, a great deal of consultation took place between the courts and the Department of Justice. One thing that concerned everyone in committee, and I am sure would concern everyone here, is the matter of an independent judiciary. Whenever there is change around the administration of a court or the administration of justice, one must always ask: Have we preserved the independence of the judiciary in attempting to make our system work more efficiently? There is no question that, while the independence of the judiciary takes precedence, the efficient operation of our court system is important to the provision of equal and timely justice to all Canadians.

The independence of the judiciary comes from two sources. In their judicial capacity, the judges must be totally free of any bias or any influence, whether it relates to their working conditions, or their pay conditions, or any matter where someone might appear to have influence or authority on their careers. The judicial decision-making must be totally free of any interference. There is no question about that because it is not discussed in this bill at all.

The other way that judicial independence can be affected is if the administration of the courts in some way interferes with the ability of the judiciary to make timely and independent decisions for whatever reason.

We need to understand that in our parliamentary system of democracy and in all of our courts, including the Supreme Court of Canada, the executive, in reporting to Parliament, must maintain the right of some oversight in relation to the expenditures of funds and in the husbanding of the public purse. There are times when there may be so-called grey areas, where perhaps further discussion is needed.

Notwithstanding the above, it is our understanding from discussions and from replies to questions we asked in committee that a great deal of effort was made to bring about, in Bill C-30, a balance that would not only protect the independence of our system and our judges but also preserve the right of Parliament to ensure that public funds, taxpayers' money, is spent in the manner it was intended to be spent in relation to the administration of justice.

There is one specific area on which we spent a great deal of time in committee. There is one other that had been raised before and since. I should like to address the second matter first, that is, the question of changing the status of judges of the Tax Court to that of superior court justices.

For those of you who are not involved in that particular arena — and some of us try to avoid being involved too closely with it in some instances — let me give you some background. The only judges that adjudicate on any legislation that is in the federal jurisdiction that are not classified as superior court judges are those in the Tax Court. This bill proposed to bring the judges of the Tax Court — who have the same types of qualification and require the same independence and support as any of the other superior court judges — to the same status and the same position as the judges of the superior courts in our provinces.

Some of this comes from a question that was asked I believe by Senator Murray at the beginning and then referred to by some people on our side privately. The change is intended to put the judges of the Tax Court on an equal status and equal footing with the judges of the Federal Court Trial Division for purposes of their ranking. It has nothing to do with the amount of money that is spent. They are all paid at the same level as it is. The terminology would then be the same. This is being done to promote a cooperative and collaborative approach to the consolidation of the services, the shared facilities, that were identified by the Auditor General.

•(1650)

This proposed legislation will not involve any change in the jurisdiction of the Tax Court, nor will it increase costs, since the members of the Tax Court are currently compensated at the same level as superior court judges.

It is worth noting that with the amalgamation of district and county courts with superior courts across Canada, the Tax Court is composed of the sole remaining federally-appointed judges without superior court status.

I hope that answers the question as to why we are proceeding in this fashion. This proposed legislation is an attempt to place judges on the same level from the point of view of their status in dealing with each other.

Of more concern to members of the committee was the independence of the judiciary and the question of the appointment, reappointment and removal from appointment of the chief administrator.

Through Bill C-30, the chief administrator will be appointed by the Governor in Council. The appointment is at pleasure for up to five years. The appointment may be renewed and there is no limit on the renewal. The chief administrator may either be removed or not reappointed. The significant part of that is that the appointment is made in consultation with the chief justices of each of the courts. That would apply not only to the appointments but also to any reappointments or any removal of a chief administrator.

The division of authority within the realm of the sittings of the courts or the assignment of judges to courts, those normal judicial independence decisions are made finally by the chief justices of the appropriate court.

The chief administrator ensures that there is a courtroom, in general, and that in the summertime it is air-conditioned and in the winter it is heated.

There is a significant difference between administering the courts — that is done by the judges and the Chief Justice — and what the chief administrator does.

The final decision, even in the area that is exclusively under the act and is ordinarily and exclusively within the realm of the chief administrator, can be superseded by any chief justice. That is what finally put to rest the concerns in the minds of many people. Senator Moore used a metaphor from the sport of curling; he said, "The Chief Justice has the hammer." The Chief Justice does have the hammer. The Chief Justice, under this proposed legislation, can direct in writing the chief administrative officer to take an action, even in regard to one that might be within the exclusive jurisdiction of the chief administrator. Therefore, the final decision of the administration of the courts, if there is any problem, is made at the Chief Justice level and the direction can come from there. In ordinary circumstances, that is highly unlikely. Most of the time matters will be worked out because there must be cooperation in doing these things.

The model that will be put in place through this proposed legislation has been developed over a long period of time, through a great deal of discussion and a great deal of effort, to try to give it balance.

Australia is the only country with a functioning model comparable to this proposed legislation. Australia has had a similar system for a number of years. It is working well and they are satisfied with their system.

With all of the give and take within the committee and the exhaustive questioning of witnesses, when we proceeded to clause-by-clause consideration of this bill, the proposed legislation passed unanimously in committee, with no abstentions.

I ask honourable senators to give their support to this bill at the appropriate time.

On motion of Senator Beaudoin, debate adjourned.

THE ESTIMATES, 2001-02

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (B) ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the adoption of the eleventh report of the Standing Senate Committee on National Finance (*Supplementary Estimates (B) 2001-02*), presented in the Senate on March 14, 2002.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to touch on two matters that are mentioned in the report before us. The first has to do with the long saga of the Sustainable Development Fund. I will not go into the background of this matter; it has been before Parliament for some two years now.

Our own Standing Senate Committee on Energy, the Environment and Natural Resources called the way the money was advanced by Treasury Board for an activity that had yet to be approved by Parliament an affront to Parliament. The Auditor General, while feeling the process was legal, also felt it was entirely unacceptable. When the Supplementary Estimates (A) were before the other place, the Speaker of the House of Commons ruled that the request for the reimbursement of the funds from the two departments to Treasury Board was done in a way that was unacceptable.

This entire saga has been one of mistakes, either voluntary or accidental. Unfortunately, they are mistakes that the government has yet to accept and acknowledge having been of its own doing, which only makes me believe that the government did so purposely and with disdain for Parliament.

The government did not make the corrections in Supplementary Estimates (A), as was the assumption all along, following the ruling of the Speaker of the other place. The government has made the corrections in Supplementary Estimates (B) that are before us today, via the report of the Standing Senate Committee on National Finance. This means that when we voted to approve Bill C-45, which contained the Supplementary Estimates (A), we voted amounts of money that should not have been there.

Honourable senators, this is more than just a technical error. This is voluntary disdain by the Government of Canada, vis-à-vis Parliament, as to its ultimate authority over the authorization of public funds.

•(1700)

The government asked that we vote Supplementary Estimates (A) with the errors it contains, saying that it would take care of them in Supplementary Estimates (B). That is not the way in which the parliamentary system is supposed to operate.

Let me quote what the Auditor General said about the whole process. In her report of last September, she said, in part, the following:

> I certainly hope that in the rest of my tenure as Auditor General of Canada, I will not see another such series of events carried out to achieve a desired accounting result.

Finally, on this topic, I also want to quote a remark from the Commissioner of the Environment and Sustainable Development, who is under the authority of the Auditor General:

> Our Office is currently auditing the governing frameworks that the sponsoring departments have put in place for these four environmental funds...

That report will come out some time next month.

I am also pleased to see that the Standing Senate Committee on National Finance will be doing a study on the increasing discretion that Treasury Board is giving itself under government direction to authorize the release of funds for activities that have not been approved by Parliament. That is not to say that the activities are not valid or would not be supported. However, the amounts are voted and authorized, the activity is started, and then Parliament, in due course, is asked to authorize them.

That leads me to the second matter in the report, which has to do with the Pierre Elliott Trudeau Foundation. I will comment neither on the individual after whom the foundation is named nor on the purpose of the foundation. That has nothing to do with my remarks. However, the whole way in which the government has treated the foundation is just a continuation of it ignoring Parliament's involvement in the expenditure of public funds.

The foundation was authorized on February 7, 2001, and it is a private foundation. I think that because of the criticism made of the government for creating foundations through parliamentary authorization and putting in funds outside the authority of Parliament, it decided to encourage a private group to form a non-profit private corporation that will not have to report to Parliament at all once it gets the public funds.

This foundation was created by private individuals under the appropriate legislation. It is a private, non-profit foundation and it reports to no one except the Department of Industry, where it files routine reports.

The government announced, not long ago, that it is going to donate $125 million to this foundation, admittedly for very valid reasons, but without any input by Parliament whatsoever. This foundation has the government's fingerprints all over it. In his statement announcing the grant, the Minister of Industry said:

> To do so, we have enlisted the participation of a remarkable group of people.

"We" means "the government."

At the beginning of his comments made on February 20, 2002, Minister Rock said:

> In January of last year, the Prime Minister told the House that the Government of Canada would create a legacy to honour the memory of former Prime Minister Pierre Elliott Trudeau.

Just a few days later, this foundation was created.

We asked the law firm responsible for the incorporation for a copy of the bylaws of the corporation, which are quite standard. However, in the covering letter that accompanies the bylaws, we can read the following:

> We —

— meaning the foundation —

> — are presently in the process of finalising and implementing the governance structure of the Foundation to reflect the funding pledge from the Government of Canada.

This is unheard of. Here is a private foundation, a tool of the government, poorly camouflaged, created by the government, encouraged by the government, instead of what should have happened, which would have been a much better honour to Pierre Elliott Trudeau, that is, Parliament creating a foundation, Parliament having authority over the funds and Parliament authorizing the funds. Instead, $125 million will go into this foundation and we will never hear what happens to it. There will, of course, be releases saying that various students have received various scholarships. There are other tools for scholarships in Canada. There is the Millennium Scholarship Foundation and the Canada Council. Why not give well-established authorities created by Parliament the right to disburse these funds? I think the memory of Pierre Elliott Trudeau would have been better honoured by doing it this way. This is not the way that he would appreciate having it done.

What authority do you think the minister found to convince Treasury Board that he could unilaterally have these funds put in Supplementary Estimates (B) without Parliament's authority? Look in Supplementary Estimates (B) under what is called "Micro-Economic Policy." The Main Estimates, 2002-03 for the Department of Industry say the following about micro-economic policy:

> This Business Line sets the overall priorities and direction for the department's micro-economic agenda in the "four pillars" of marketplace climate, trade, technology and infrastructure, outlined in the government's framework document "Building a More Innovative Economy (BMIE)" and consistent with the Speech from the Throne priorities. The major challenge in developing the micro-economic policy agenda will be to identify the key emerging issues, to marshall the analytical evidence for the appropriate policy responses and engage the commitment of a diverse group of departments and agencies inside and outside the Industry Portfolio in implementing them. The challenge must also include integrating a sustainable development strategy and sustainable development concepts into the work of the department.

Honourable senators, it is under this heading that these monies were authorized by Treasury Board to be shifted over to a foundation intended to give scholarships in honour of a former prime minister. What relation micro-economic policy has to the purpose of the fund is beyond me. If anyone in this room can help me out on that, I would look forward to it.

Finally, I said earlier that the bylaws of the foundation would be altered to comply with the government's conditions — not Parliament's conditions — for the transfer of funds. When Treasury Board officials were at the Finance Committee meeting, the following question was asked: What are these conditions? Mr. Neville of the Treasury Board, a very qualified and straightforward individual, in response to Senator Banks, I believe, said the following:

> As to your second question, concerning the funding agreement, I am not certain that we are at liberty to disclose that, even after Treasury Board has approved it. I believe that is still the confidence of the Crown. I am not sure that we could release that information.

Here we are, under a questionable rubric entitled "Micro-Economic Policy" hidden away in Supplementary Estimates (B), after a press release of the Minister of Industry, being asked to authorize the disbursement of $125 million, the conditions of which we are not even entitled to know. Only the Crown and the foundation directors can know. Parliament, the main purpose of which historically has been power over the purse, is not entitled to know.

•(1710)

I will leave it at that, honourable senators, because there are so many other examples of the government taking upon itself more and more the authority to spend funds using Treasury Board approvals, which, some of us feel, is stretching the interpretation of the act under which they are being authorized.

The Auditor General is on to it, and we will hear more from her. Senator Murray's committee will look into Treasury Board authorizations, and I hope the other place, which seems to be rather casual about its ultimate responsibilities, will get on to it also.

It is ironic that it is the nominated house that brings up in this place its concern about repeated offences to parliamentary authority when it comes to the disbursement of funds, and when one reads the Hansard of the other place, one sees no mention of it at all except a casual, "What else can we do?" What we can do in this place, via the Standing Senate Committee on National Finance, is get on to it with a strong report supporting a return to Parliament of its main responsibility, being the ultimate authority over the disbursement of public funds.

The Hon. the Speaker: Honourable senators, I must advise that I am giving the floor to Senator Cools. She is the mover of the motion to adopt the report. If she speaks now, her speech will have the effect of closing the debate.

Hon. Anne C. Cools: Honourable senators, any senator is welcome to speak. I will be happy to defer.

I should like to thank Senator Lynch-Staunton for his remarks in respect of two important items, one being the Pierre Elliott Trudeau Foundation, which involves a grant of some $125 million, and the second being the Canadian Foundation for Sustainable Technology Development. From what I can see, Senator Lynch-Staunton has referred extensively to the debates in this chamber in December, when we adopted Supplementary Estimates (A).

Honourable senators, I will deal with this particular question more extensively in my upcoming speech on the Supplementary Estimates (B) and the supply bill itself. In anticipation of that discussion, I wish to note that in his remarks Senator Lynch-Staunton cited the Auditor General, Ms Sheila Fraser, in the Public Accounts of Canada 2001, Volume I, as follows:

> I certainly hope that in the rest of my tenure as Auditor General of Canada, I will not see another such series of events carried out to achieve a desired accounting result.

Those are extremely damning words, honourable senators, and I propose to deal with them, particularly when one considers that the series of events to which she was referring have been dealt with, corrected and handled adequately in Supplementary Estimates (B) currently before us. I hasten to add that I shall take issue, as I have taken issue, with those very words of the Auditor General, and we shall develop that as time goes on.

If one were to look at the same Public Accounts of Canada 2001, Volume I, as produced last September, one would see that the Auditor General spends quite a few pages on that particular subject matter and also on a question of the funding of foundations in general. I can say, with a reasonable amount of accuracy, that the Auditor General simply does not like the fact that the Government of Canada has been using these foundations as an instrument of program, resources and services delivery. I would submit to honourable senators that those are policy questions on which the Auditor General and the government differ.

The essential point I wish to make in response to Senator Lynch-Staunton is that a concern was raised in the House of Commons last November on a point order. The Commons Speaker, Peter Milliken, addressed the question and proceeded to say that Supplementary Estimates (A) were quite in order and that they should proceed before the chamber. They proceeded and they were adopted. When the Commons Speaker gave his ruling, he said that the matter could be corrected by the Supplementary Estimates process, which obviously meant Supplementary Estimates (B).

Honourable senators, the matter has been corrected. Senator Lynch-Staunton attended the National Finance Committee last week when the Deputy Comptroller General, Mr. Neville, explained the correction and how the concerns of Speaker Milliken had been satisfied.

Clearly, honourable senators, Senator Lynch-Staunton and I have a different view of the facts, but the government did make the changes and corrections to Supplementary Estimates (B). The House of Commons accepted them, and so has the Senate committee.

Honourable senators, I shall develop this more extensively when I speak on Bill C-51 in a few minutes.

Senator Lynch-Staunton: Honourable senators, I rise on a point of order. I should have raised it before. The honourable senator said that I have slighted the Auditor General. I did not slight anyone in my remarks. I quoted the Auditor General.

Senator Cools: I do not believe I said "slighted." I do not think the honourable senator slighted the Auditor General. I think he is her greatest supporter.

Senator Lynch-Staunton: The honourable senator has a short memory — a selective memory, as my mother would say.

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

It was moved by the Honourable Senator Cools, seconded by the Honourable Senator Watt, that the eleventh report of the Standing Senate Committee on National Finance be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

BUDGET IMPLEMENTATION BILL, 2001

REPORT OF COMMITTEE

Leave having been given to revert to Reports of Committees:

Hon. Lowell Murray, Chair of the Standing Senate Committee on National Finance, presented the following report:

Monday, March 25, 2002

The Standing Senate Committee on National Finance has the honour to present its

FIFTEENTH REPORT

Your Committee, to which was referred Bill C-49, *An Act to implement certain provisions of the budget tabled in Parliament on December 10, 2001,* has, in obedience to the Order of Reference of Wednesday, March 20, 2002, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LOWELL MURRAY
Chair

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

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

APPROPRIATION BILL NO. 4, 2001-02

SECOND READING

Hon. Anne C. Cools moved the second reading of Bill C-51, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002.

She said: Honourable senators, I rise today to speak to the second reading of Bill C-51, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002, which as we know is in a very few days.

Bill C-51 is known as Appropriation Act No. 4, 2001-02, the final supply bill for this fiscal year ending March 31, 2002. Bill C-51 provides for the release of the total of the amounts set out in Supplementary Estimates (B) 2001-02, being $2.8 billion. These Supplementary Estimates (B) are the final Supplementary Estimates for the fiscal year that ends in a few days, on March 31, 2002. Supplementary Estimates (B) were introduced in the Senate on March 5, 2002, and on March 6 were referred to the Standing Senate Committee on National Finance. Treasury Board Secretariat officials appeared before the Senate National Finance Committee on March 6. The officials were Mr.Richard Neville, Deputy Comptroller General, and Mr. David Bickerton, Executive Director, Expenditure Operations and Estimates Directorate. The National Finance Committee reported to the Senate on Supplementary Estimates (B) on March 14, 2002, in its eleventh report. The Senate adopted that eleventh report, this day, a few minutes ago.

•(1720)

Honourable senators, the 2001-02 Supplementary Estimates (B) seek Parliament's approval to spend $2.8 billion on expenditures — that is, voted appropriations — for 2001-02 that were provided for within the $169.7 billion in overall planned spending for 2001-02, as set out in Minister of Finance Paul Martin's December 2001 budget. These estimates were not included in the 2001-02 Main Estimates. These Supplementary Estimates (B) provide information to Parliament about a net decrease of $573.4 million in changes to projected statutory spending from amounts forecast in the Main Estimates earlier this fiscal year.

Honourable senators, I shall provide senators with an overview of the contents of Supplementary Estimates (B) and its accompanying bill, Bill C-51. Some of the more important items affecting more than one organization for which approval is required include the following: $841.6 million in new funding dedicated to public security, combating terrorism and ensuring the economic security of Canadians in the wake of the September 11 terrorist attacks; $392 million for compensation for collective agreements; $215 million for increased funding for other international assistance, such as $100 million to the Canadian International Development Agency for humanitarian and transition assistance in Afghanistan and surrounding countries, $98.9 million to the Canadian International Development Agency for payments to the international multilateral institutions, and $16.1 million to the Department of Finance for payments to the International Monetary Fund's Poverty Reduction and Growth Facility; and $125 million to Environment Canada and Natural Resources Canada for grants to the Canadian Federation of Municipalities.

Honourable senators, in addition, there are also a number of items affecting single organizations. These include the following: $207.7 million to the Department of National Defence for increased funding to cover the provision of health care services and recruitment, retention and training activities for the Canadian Forces; $199.9 million to the Social Sciences and Humanities Research Council for indirect costs of University Research; $273.5 million to the Department of Industry for additional grant requirements, such as $125 million for the Pierre Elliott Trudeau Foundation, $110 million for CANARIE for CA*net4 Internet Broadband, $25 million for the Canada Institute for Advanced Research, $7.5 million for the Canadian Youth Business Foundation, and $6 million to Shad International; $95 million to the Department of Health Canada for additional funding for the Canadian Institute of Health Information; and $61.6 million to the Department of Veterans Affairs for increased requirements for disability pensions.

On the non-budgetary side, there is a $20 million increase to the working capital advance account for National Defence.

Honourable senators, the above items represent $2.43 billion of the $2.78 billion for which parliamentary approval is sought. The $347.9 million balance is spread among a number of other departments and agencies, the specific details of which are included in the Supplementary Estimates. With respect to changes in projected statutory spending, there is a $573.5 million decrease to spending previously authorized by Parliament. The updates shown in these Supplementary Estimates are provided for information purposes only. The major statutory items to which there are changes in the projected spending amounts are — and I list the increases first and then the decreases. The increases are as follows: an increase of $1.9 billion in Employment Insurance benefit payments to recipients and an increase of $127 million to Human Resources Development Canada for a projected increase in income security payments.

The decreases are: a decrease of $2.5 billion to the Department of Finance for a projected decrease in public debt charges, a decrease of $137 million to Human Resources Development Canada for Canada Education Savings Grants and a decrease of $60 million to Finance for a projected decrease in transfer payments to provincial and territorial governments. Finally, on the non-budgetary side, there is a decrease of $217 million to Human Resources Development Canada for loans disbursed under the Canada Student Financial Assistance Act.

Honourable senators, there is one last item I wish to deal with, namely, the matter that was raised a while ago by the Honourable Senator Lynch-Staunton. I propose to give honourable senators more detail and to expand my explanation a bit so that we may, perhaps, consider this issue settled. In particular here, I am speaking of the matter of the Treasury Board's correction in these Supplementary Estimates to conform with and to honour Speaker Milliken's ruling in the other place on November 22, 2001. I remind honourable senators that these facts have arisen from two grants of $25 million each to the Canada Sustainable Development Foundation, to which Senator Lynch-Staunton had referred in his remarks.

Honourable senators, at the National Finance Committee meeting on March 6, 2002, Mr. Richard Neville, Deputy Comptroller General, went to great pains to explain the matter. Further, our eleventh report — which we just adopted and which is recorded in Senate Journals, March 14, 2002, page 1301 — provides a good account of both Mr. Neville's and the government's corrective action. Speaker Milliken's November 22, 2001 ruling on a point of order on the Supplementary Estimates (A), raised on November 1, 2001 by John Williams, Member of Parliament for St. Albert, stated that he, the Speaker, did not have an issue with the grant items in Supplementary Estimates (A), ruling that they applied specifically to the foundation established pursuant to the passage of Bill-C 4 and that these grant items were valid items. He ruled therefore that the Supplementary Estimates (A) for 2001-02 could proceed for debate and adoption by the other place, saying that there was ample time for the government to make corrective action in the Supplementary Estimates process. This is a statement about which Senator Lynch-Staunton seems to assume that Speaker Milliken meant Supplementary Estimates (A). I shall read the Speaker's statements clearly to all of us. The Speaker could not have been speaking about Supplementary Estimates (A) because he ruled that they could proceed for debate. He must have been speaking about a future Supplementary Estimates, the one that we now have before us, namely, Supplementary Estimates (B). Honourable senators, I should like to place on the record Speaker Milliken's exact words. His words are found at page 7455 of *Debates of the House of Commons*, November 22, 2001. Speaker Milliken said:

> ...does not consider that the notes in the supplementary estimates (A) concerning the disbursement of these earlier monies are sufficient to be considered as a request for approval of those grants. In other words, the approval that is being sought in supplementary estimates (A) cannot be deemed to include tacit approval for the earlier $50 million grant.
>
> However, as there remains ample time for the government to take corrective action by making the appropriate request of parliament through the supplementary estimates process, the Chair need not comment further at this time. The supplementary estimates (A) for 2001-2002 can therefore proceed.

Honourable senators, that is what Speaker Milliken said. I am not sure that Senator Lynch-Staunton fully understands what was involved and what was intended in that ruling.

•(1730)

Honourable senators, if we could look to Supplementary Estimates (A) 2001-02, we would discover that there are two entries under two departments. These entries are found in Supplementary Estimates (A) pages 58 and 115. The departments in question are the Department of the Environment and the Department of Natural Resources. If one were to go to the items, one would see, under vote 10, that there is a grant of $50 million to the Foundation for Sustainable Development Technology. If one were to turn the page to the Department of Natural Resources, one would see again, under vote 10, an item of $50 million to the Foundation for Sustainable Development Technology.

It is important to understand that Speaker Milliken was in actual fact referring to a note at the bottom of both pages. Those notes read as follows:

> Funds in the amount of $25,000,000 were advanced from the Treasury Board Contingencies Vote to provide temporary funding for this Program.

Speaker Milliken is saying, essentially, that those footnotes cannot be adequate requests to Parliament for authority to spend money and that, in point of fact, those amounts of money were deserving of their own lines as individually articulated grant items.

Honourable senators, the government has made the necessary correction in the Supplementary Estimates (B). A look at the blue book reveals the correction. If we were to look at page 62 of Supplementary Estimates (B), under the Department of Environment, there is a grant item to the Foundation for Sustainable Development Technology in Canada for $25 million. At page 112, under the Department of Natural Resources, there is another $25 million grant item to the same foundation. These pages show that both of these grant items are footnoted as follows:

> Funds in the amount of $25,000,000 were advanced from the Treasury Board Contingencies Vote to provide temporary funding for this Program. The inclusion of this item is in response to the ruling of the Speaker of the House of Commons on November 22, 2001.

Clearly, honourable senators, the necessary and vital corrective action has been taken. I am of the view that this action fully addresses the original point of order in Speaker Milliken's ruling; further, it satisfies the concerns raised by certain honourable senators during our debate here on the Supplementary Estimates (A) last December 2001.

Honourable senators, I turn now to the government's request for parliamentary authority to confirm the original $50 million advanced to the original not-for-profit private cooperation under the interim authority that exists under Treasury Board Contingencies vote 5, known as TB vote 5. As Speaker Milliken said in his ruling, this issue has now been addressed in these Supplementary Estimates (B). I should like to assure honourable senators of the following, specifically, that pending adoption and passage of the final Supplementary Estimates (B), the bill now before us, the government has not used current appropriations to reimburse TB vote 5 for the interim $50 million advance to the original not-for-profit corporation.

I further assure honourable senators that consistent with the usual practice and use of interim authority provided by Treasury Board vote 5, the government is seeking Parliament's approval of two grant items in the final Supplementary Estimates (B) for the fiscal year ending March 31, 2002, for Environment Canada and Natural Resources Canada, to authorize a $50 million grant to the original not-for-profit private corporation, corresponding to the funds advanced from Treasury Board vote 5. Again, I assure that Parliament's approval is also being sought to use $50 million of the $100 million to cover the costs associated with these grant items, specifically the $50-million advance from Treasury Board vote 5. The effect of this is to leave the total appropriated amount for these items for this fiscal year at the $100 million, as originally announced in the 2000 budget. I emphasize, honourable senators, that no additional funds are required, as the funds will be taken from those previously approved by this Senate in Supplementary Estimates (A) last December 2001.

Honourable senators, the matter has been satisfied. The Treasury Board officials went to great lengths to explain the steps they took to make the correction. I thought it was an act of great deference to the Speaker of the House of Commons. I hope that this has satisfied Senator Lynch-Staunton.

I understand that he disagrees with government policy on the question of the government's use of foundations for public policy purposes. However, I would stress that that is a public policy disagreement. That in no way or in any form should be translated to mean that somehow or the other the government is acting improperly or bordering on lack of probity. The Auditor General was not suggesting that anything was illegal. In no way should it be suggested or offered in this chamber that the government is acting improperly or with any lack of probity. I take strong objection to that suggestion.

Honourable senators, the Auditor General of Canada has a sharp policy disagreement with the government. When that disagreement is coming forth and sounds to be under audit consideration, it takes on a sense that is really not the reality. What is at play here, as with Senator Lynch-Staunton, is a difference on policy.

I am concerned that the Auditor General has adopted this position of disagreeing with the government on a matter of public policy. I deeply regret her statement, cited by Senator Lynch-Staunton and found at page 138 of the Public Accounts of Canada, where she said:

> I certainly hope that in the rest of my tenure as Auditor General of Canada, I will not see another such series of events carried out to achieve a desired accounting result.

That brings us to a very important question that I would like to share with Senator Lynch-Staunton. The Auditor General of Canada is a servant of the House of Commons. The Auditor General is not a servant of the Senate of Canada. It is a point not known by many here and not appreciated. Perhaps, as we go forward on these issues, we could begin to clarify that point again because it should be very clear that the focus of the Auditor General's work is as a servant of the House of Commons.

I come now, honourable senators, to the very last point. In a way, I am pleased that Senator Lynch-Staunton has raised these issues. It may be time for us to have a full-fledged debate on this whole question, and perhaps we should bring into the debate the role of the Auditor General.

I come now to Senator Lynch-Staunton's last point on the Pierre Elliott Trudeau Foundation. It is not a government foundation. It is a private foundation to facilitate and move monies into the hands of students who wish to study in very accomplished and developed ways. To that extent I laud it. There is absolutely nothing wrong with what the government is doing, and I would encourage Senator Lynch-Staunton to re-examine his position and find his way to supporting what is undoubtedly a very good and excellent achievement intended to advance the matter of study and scholarship in this country.

•(1740)

Honourable senators, I know these issues are difficult and complex, but we must remember the questions that Senator Lynch-Staunton raised. Even though he found support for them in the Auditor General of Canada, he has not found much support for them in the House of Commons. We must remember that the Auditor General is a servant of the House of Commons, which we shall expand on at a later time.

I thank honourable senators for their attention on this intricate, involved and complex matter.

Hon. Lowell Murray: Would the honourable senator permit two questions?

The Hon. the Speaker *pro tempore***:** Will you take questions, Senator Cools?

Senator Cools: Yes.

Senator Murray: Will she agree with me that what she is pleased to call a policy disagreement between the Auditor General and the government really involves the defence by the Auditor General of the traditional prerogatives of Parliament, which are being disdained by the government?

My second question, with regard to the Trudeau foundation, is to ask whether she knows if, in addition to the $125 million of public money that is being given to the foundation, it is intended by the foundation to raise an equal or greater amount from the private sector?

Senator Cools: I do not know what the intention of the foundation is. However, I do know that one of the reasons the government has recently began to utilize foundations as a vehicle or instrument is precisely because foundations have a large amount of flexibility and, in this instance, one such flexibility is to receive money from the private sector. I do not have much information on the foundation itself, but I would be happy to find out more.

There is a huge debate between the Auditor General and the Treasury Board and government on the use of these foundations, and certain members of this chamber have chosen to take up the cause of the Auditor General as opposed to the cause of the government. There is very sharp disagreement, and I invite all honourable senators to begin to read and study this issue, to be better informed in debate.

Regarding the honourable senator's question about the government, I do not believe that the government is disdaining Parliament at all. In the instance of the issue that has just been corrected and explained by Mr. Neville and his colleagues, I honestly think it was an oversight. I do not believe there is any violation of Parliament, and these gentlemen and ladies quickly responded to the Speaker's ruling and made the necessary correction.

[Senator Cools]

However, the real concern here that we have to deal with is, whenever government mistakes, oversights or errors are articulated as wrong under the rubric of audit, it automatically instils fear and terror into people's hearts. After all, audits speak to the issue of morality, honesty and dishonesty. I want to make it my duty here to say that, yes, there is a public policy issue at stake and, yes, we should debate it and take a position on it. I think the position we adopt should come after some profound and detailed study rather than being a knee-jerk response to an Auditor General's statement. That is my point.

Hon. David Tkachuk: I move the adjournment of the debate.

The Hon. the Speaker *pro tempore***:** Senator Cools, Senator Tkachuk moved adjournment of the debate.

Senator Cools: I am aware of that.

Senator Corbin: She closed the debate.

Senator Tkachuk: I just moved the adjournment of the debate.

The Hon. the Speaker *pro tempore***:** It is moved by Senator Tkachuk, seconded by Senator Nolin, that further debate be adjourned until the next sitting.

Hon. Lorna Milne: Point of order. I believe that Senator Cools' intervention was her second time to speak on this bill, so we should now call the question on the bill itself.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): That was never put to us.

The Hon. the Speaker *pro tempore***:** Is the house ready for the question on Senator Tkachuk's motion to adjourn the debate?

Hon. Senators: Yes.

The Hon. the Speaker *pro tempore***:** It was moved by Senator Tkachuk, seconded by Senator Nolin, that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore***:** Those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore***:** In my opinion, the "nays" have it.

It was moved by Senator Cools, seconded by Senator Watt, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Senator Kinsella: On a point of order. Honourable senators, I do not recall whether or not the chair put this matter to the Senate as required by the rules.

Senator Murray: Yes, he did.

Senator Kinsella: Thank you.

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***:** When shall this bill be read the third time?

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

APPROPRIATION BILL NO. 1, 2002-03

SECOND READING—DEBATE ADJOURNED

Hon. Anne C. Cools moved the second reading of Bill C-52, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003.

She said: Honourable senators, I rise today to speak to second reading of Bill C-52. Bill C-52 is also known as the Appropriation Act No. 1, 2002-03. It provides for the release of interim supply for the 2002-03 Main Estimates for a total of $16.908 billion.

•(1750)

The Main Estimates were introduced in the Senate on March 5, 2002. On March 6, they were referred to the Standing Senate Committee on National Finance for examination. On March 12, the Standing Senate Committee on National Finance heard from Treasury Board Secretariat officials David Bickerton, Executive Director, Expenditure Operations and Estimates, and Laura Danagher, Senior Director of Expenditure Operations. On March 19, the committee presented an interim report to the Senate, its thirteenth report. The Senate adopted that report on March 21, a few days ago.

Honourable senators, the 2002-03 Main Estimates are for a total of $170.3 billion. This is an increase of $5.2 billion, which is an increase of 3.1 per cent over last year's 2001-02 Main Estimates. The 2002-03 Main Estimates represent budgetary spending authorities for a total of $168.3 billion. This amount represents over 97 per cent of the expenditure plan, as set out in the December 2001 budget of the Minister of Finance, Paul Martin. The remaining balance includes provisions for further spending under statutory programs or for authorities that will be sought through Supplementary Estimates. Budget 2001 also provided for the revaluation of the government's assets and liabilities and allowed for any anticipated lapses of spending authority.

Honourable senators, the government submits its Estimates to Parliament in both Houses to support its request for authority to spend public funds. The Estimates include information on both budgetary and non-budgetary spending authorities. Subsequent to the examination of the Estimates, Parliament considers and votes on the appropriation bills to authorize the government's spending.

Budgetary expenditures include all those expenditures to service the public debt, all those operating and capital expenditures, all those transfer payments to other levels of government, organizations or individuals, and all those payments to Crown corporations. Non-budgetary expenditures include loans, investments and advances, which represent changes in the composition of the financial assets of the Government of Canada. These Main Estimates 2002-03 support the government's request to Parliament for Parliament's authority for the government to spend $56.3 billion under program authorities, for which Parliament's annual approval is required. The remaining $112.1 billion, which is 67 per cent of the total, is statutory, and those forecasts are provided for information purposes only.

Senators discussed these Estimates in some detail with the Treasury Board Secretariat officials when they appeared before the Standing Senate Committee on National Finance on March 12, 2002. A brief account of the exchange between senators and the officials is provided in the committee's thirteenth report in the *Journals of the Senate*, March 19, pages 1318 and 1319.

Honourable senators, I propose now to give an overview of some of the major changes affecting 2002-03 Main Estimates. These include the following major increases: $3.8 billion for the statutory adjustment to the net Employment Insurance benefits and administration as reflected in the consolidated specified purposes accounts; $1.3 billion for the Canada Health and Social Transfers; $1.2 billion for direct transfers to individuals, including increases in Old Age Security and Guaranteed Income Supplement; and $613 million for public security and anti-terrorism initiatives.

These increases also include $439.1 million for salary increases, including the salaries of judges, members of the RCMP, members of Parliament and House Officers' remuneration, as adjusted in accordance with Bill C-28; $382 million for the Resource and Management Review to meet Canada Customs and Revenue Agency's workload requirements, address rust-out, provide for investment requirements and restore historical service levels; $349 million in payments to various international financial institutions relating to the commitments made by Canada under the multilateral debt reduction agreements; $348.6 million for the Department of

National Defence spending, including $110.6 million for pay and benefit adjustments approved for military and civilian personnel; and $348.1 million in transfer payments under the Canada Infrastructure Program.

Honourable senators, continuing with my overview of the major changes in the 2002-03 Main Estimates, there will be $216.2 million to address core operational and/or capital requirements, including recruitment, retention and learning initiatives; $169.8 million for the establishment of the Primary Health Care Transition Fund; $155.9 million in contributions for the new Strategic Highway Infrastructure Program; and $143.5 million for the Fisheries Access Program to support the transfer of fishery licences to Aboriginal fishers and to address sustainable economic development and exploration of Aboriginal and treaty rights.

Honourable senators, the Main Estimates also include $140.5 million for employer contributions to insurance plans for public service employees, largely caused by an increase in health care and other insurance programs and provincial health payroll taxes; $113 million for government office accommodation, being additional space requirements of government departments, increased costs and temporary space required to allow maintenance to the existing office space; $107.6 million to meet the increased demand for ongoing programs and services including the implementation of the Labrador Innu Comprehensive Healing Strategy; and $97.5 million for the climate change initiatives related to the Climate Change Action Plan 2000.

Other amounts to be included are $97.1 million in disability pensions due to the annual price indexation adjustments, increases in the volume of attendance allowance awards and an increase in the level and number of disabilities as clients age; $85 million in payments to the provinces and territorial governments; $81.6 million for the introduction of two new contribution programs to give Canadians more access to arts festivals and live professional performances, to improve physical conditions for artistic creativity and innovation, and for new initiatives to provide Canadians with quality cultural events by assuring the consolidation of the organizational, administrative and financial condition of arts and heritage organizations; $77 million for the implementation of regional innovation initiatives; $76.7 million for the establishment of the new Federal Tobacco Control activities; $76 million for the new Atlantic Investment Partnership Initiative; $75.7 million for the merger of the Communication Coordination Services Branch of Public Works with Communications Canada; and $74.3 million for the increased costs of doing business abroad, including Canada's membership costs in international organizations.

Additional amounts include $74 million for the creation of a new program under the National Shipbuilding and Industrial Marine Policy Framework to stimulate production in Canadian shipyards and an increase in payments under the Technology Partnerships Canada Program; $69.5 million for the construction of the new Canadian War Museum, including the revitalization and development of the LeBreton Flats site, including site decontamination, road work and servicing; $60.5 million in capital funding to complete the purchase of a new office building in Vancouver and for health and safety repairs to various installations; $60 million for contributions for agricultural risk management, the Canadian Farm Income Program; and $60 million to strengthen and enhance CBC's radio and television programming.

Further changes include $56.1 million for the establishment of the Office of Indian Residential Schools Resolution of Canada, created in June 2001 by Order in Council; $54.4 million, in large part due to the implementation of programs committed under the Ozone Annex of the Canada-United States Air Quality agreement as well as for funding for the Climate Change Action Fund; $53.2 million for interim funding, to ensure the integrity of the Canadian Food Inspection Agency's programs and to enhance the regulation and control of veterinary drug residues in food-producing animals and food products of animal origin; $50.7 million, mainly to the increase in Canada's commitment to its international assistance envelope; and $50.1 million for the encashment of notes of international financial institutions in order to meet Canada's commitment to the African Development Bank.

Honourable senators, continuing my recitation of the Main Estimates 2002-03, I now include some of the major decreases to various departments as follows: $5.4 billion in public debt interest and servicing costs; $183.8 million to the completion of the 2001 Census of the Population, $173.8 million to the 2001 Census of Agriculture; $133 million to the Canada Jobs Fund, due to the June 2000 decision to close the fund —

The Hon. the Speaker *pro tempore***:** Honourable Senator Cools, I apologize for the interruption. It is now six o'clock. Is it your pleasure, honourable senators, that I do not see the clock?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** You may continue, Senator Cools.

•(1800)

Senator Cools: Other decreases include $101.7 million in payments to international organizations related to the encashment of notes by the International Development Association in accordance with the Bretton Woods and Related Agreements Act, and also payments to the International Monetary Fund's Poverty Reduction and Growth Facility; $91.8 million for government-wide initiatives largely due to the sunsetting of funding for the government-on-line initiative; and $76 million to the Canada Education Savings Grant Program because the department now has access to a broader historical database to produce more accurate forecasts of funding utilization.

Further decreases include $75.3 million to the merger branch of the Communication Coordination Services Branch of Public Works with Communications Canada; $70 million to the Canada Student Loans Program, due to the change in financing arrangements for student loans and student assistance as a result of the change to directly financed student loans; $59.5 million to contributions to provide farm income assistance to the agricultural community Spring Credit Advance Program; $57 million to the Health Infrastructure Initiatives, due to the timing of the funding announcement in budget 2001, and incremental funding for which initiative will be accessed through the 2002-03 Supplementary Estimates; and, finally, $50 million in anticipated contribution payments to provinces under the terms of the disaster financial assistance arrangements.

Honourable senators, on the non-budgetary side there is a net change of $200 million, with the major increase being $223.4 million in payments to various international financial institutions and the major decrease being $100 million related to the loans disbursed under the Canada Student Financial Assistance Act.

Honourable senators, this represents a summary of the Main Estimates and the provisions of the content of the Appropriation Act No. 1, Bill C-52, known in our language as the interim supply bill.

In closing, I thank the Treasury Board officials and the members of the Standing Senate Committee on National Finance. I urge honourable senators to pass this interim supply bill, Bill C-52.

Hon. David Tkachuk: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Nolin, that further debate be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Hon. Lowell Murray: Surely we are not being denied the opportunity to put up at least one speaker on this bill.

The Hon. the Speaker *pro tempore***:** Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore***:** In my opinion, the "yeas" have it.

Motion agreed to, on division.

NUNAVUT WATERS AND NUNAVUT SURFACE RIGHTS TRIBUNAL BILL

REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eleventh report of the Standing Senate Committee on Energy, the Environment and Natural Resources (Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts, with one amendment and observations), presented in the Senate on March 21, 2002.

Hon. Nicholas W. Taylor moved the adoption of the report.

He said: Honourable senators, the committee submitted the report with an amendment to Bill C-33. I think the house is entitled to an explanation of the amendment that was unanimously supported in committee. It concerns the deletion of clause 3 on page 4, which reads:

> For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act*, 1982.

Many Aboriginal people appearing before us viewed this with great suspicion because they feel they are covered already by section 35 of the Constitution and did not see any reason for this clause. The government representatives said that they were just trying to help. When the government tells you they are just trying to help you have to be suspicious, so we agreed with the Aboriginal people that the best thing to do would be to take it out of the bill entirely. There is no need for the clause to be in the bill as the rights are adequately covered under section 35 of the Constitution Act.

I might mention that we have two Aboriginal senators on our committee, Senator Sibbeston and Senator Adams, and Senator Watt is also occasionally a substitute member. They were the prime force behind the committee amending the bill before it was sent back to the house.

In our report, we also made this observation:

> Your Committee views with concern the Governor-in-Council's regulatory authority over the prescribing of fees for the right to use waters on Inuit-owned land.

For those honourable senators who are not familiar with Nunavut, a portion of Nunavut contains lands that the Inuit own in fee simple. While, of course, the Inuit have rights in the rest of the land, the minister had the right to set fees and water withdrawals which mostly relate to mining in the whole of Nunavut. Your committee felt it was a little questionable whether a minister could start talking about licence fees or disposal of water on Inuit-owned lands. The Aboriginal people did not seem to be all that concerned about it, and since we had already given the minister a kick in the slats by taking out one clause, we thought an observation from the committee would be enough to hold the day.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

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

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

KYOTO PROTOCOL

NOTICE OF INQUIRY

Leave having been given to revert to Notices of Inquiries:

Hon. Nicholas W. Taylor: Honourable senators, I give notice that on Wednesday, March 27, 2002, I will call the attention of the Senate to the necessity of Canada ratifying the Kyoto Protocol, which was signed on December 10, 1997.

STATISTICS ACT
NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill S-12, to amend the Statistics Act and the National Archives of Canada Act (census records);
>
> And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Stratton, that the Bill be not now read a third time but that it be referred back to the Standing Senate Committee on Social Affairs, Science and Technology for further study.—(*Honourable Senator Milne*).

[Senator Taylor]

Hon. Lorna Milne: Honourable senators, I rise this afternoon in response to the motion put forward by Senator Murray to refer Bill S-12 back to the Standing Senate Committee on Social Affairs, Science and Technology for further study. I want to urge all honourable senators to either put a strict time limit on how long the Social Affairs Committee has to restudy this bill or defeat the motion altogether.

The fact of the matter is that I raised every single one of the issues mentioned in my third reading speech with the committee before it conducted clause-by-clause analysis of the bill. The committee commenced its consideration of the bill on September 19, 2001. As a result of that hearing, the committee was able to obtain a series of legal opinions that had been obtained by Statistics Canada. In mid-October, those opinions were circulated to all members of the committee. On October 17, 2001, I wrote to all members of the committee to express my concerns about what was uncovered in the legal opinions. In that memorandum, I stated:

> There is no credible legal opinion that has been received by Statistics Canada that can justify withholding these records from the National Archivist. As the National Archivist has already made a request for the records, the only conclusion that can be drawn is that Statistics Canada is breaking the law by failing to release the information.

•(1810)

Furthermore, honourable senators, on October 22, 2001, I sent out a nationwide press release, also sent to all senators' and MPs' offices, calling on Statistics Canada to stop breaking the law and release the information. In that press release, I stated:

> It is now clear that Statistics Canada has a legal duty to release post-1901 census records, and they have repeatedly refused to do so....They can no longer claim any legitimate reason to avoid this duty....The latest legal opinion unequivocally states that the better legal view is that post-1901 census records should be released....Furthermore, the current Chief Statistician, Dr. Ivan Fellegi, was told as long ago as 1981 that, in order to comply with both the spirit and letter of privacy and access to information legislation, Statistics Canada would have to release post-1901 census information.

My opinions on Statistics Canada's legal and moral obligations were clear long before clause-by-clause analysis of this bill. I also made absolutely sure that the members of the Social Affairs Committee were aware of my opinion some six weeks in advance of clause-by-clause analysis of the bill. I have no doubt that had the committee been interested in pursuing these opinions further, they would have taken the time at that point to call Dr. Fellegi to testify in person before the committee. The committee chose to report the bill to the chamber without amendment.

Honourable senators, I am far less concerned with the spirited opinion and the debate that has surrounded this issue than I am with the factual errors contained in Senator Murray's speech and one rather incorrect impression that he may have left with this chamber. I will deal with the factual errors first.

On page 2355 of Hansard, Senator Murray said:

> ...Senator Milne believes that the 1918 legislation and the 1906 and 1911 regulations have been overtaken by the 1983 Privacy Act...

Honourable senators, that is not at all what I believe. I am repeatedly on the record as saying that the 1906 and 1911 regulations do not in any way constitute a guarantee of perpetual privacy on the part of the government. No promise of secrecy was ever made, and these regulations specifically stated that individual census returns "will be stored in the Archives of the Dominion." I am simply calling for those regulations to be followed.

In this regard, the 1983 Privacy Act is utterly irrelevant, even though it specifically provides for the release of individual census records after 92 years. As for the 1918 Statistics Act, I freely admit, as I have already done on numerous occasions, that the law changed at that time. The instructions for secrecy on the part of the contemporary census takers, as well as the instructions that the census results would be stored in the National Archives of Canada, were included in the act itself in 1918. I do not think that act was intended to create perpetual secrecy. However, I concede that, at that point, the will of Parliament becomes unclear and that legislation is needed to clarify the post-1918 records that they should be made public.

Senator Murray also made some comments on the report of the Expert Panel on Historic Census Records. Senator Murray stated at page 2356:

> ...the expert panel...was of the view that legislation would be needed to release information collected since 1918 because of the confidentiality provisions in the law passed that year.

That is partially true, but it does not accurately reflect the broader conclusions of the expert panel. The panel found that the 1906 results could have been released in 1998 and that the 1911 census can be released in 2003 without any further legislative intervention. Furthermore, the only need to revise the law for post-1918 census information is in order to provide "greater clarity." Those were the words used by the panel. I note that the panel was co-chaired by a very strong advocate for privacy, former Supreme Court Justice Gerard LaForest.

Senator Murray also made mention of a compromise solution that would allow genealogists to search for their own ancestors. In support of the compromise solution, Senator Murray quoted Mr. Gordon Watts as saying:

> I am interested in my ancestors. I am not in interested in Mr. Radwanski's ancestors. I am not interested in Mr. Fellegi's ancestors. I am looking for my ancestors.

Senator Murray then noted that:

> ...that is the purpose of the compromise that was before the committee from Statistics Canada, and to which Mr. Radwanski referred...

In this part of his speech, I think that Senator Murray came close to suggesting that the compromise solution would address the problems that Mr. Watts and other genealogists have. I believe that Senator Murray, quite innocently, I am sure, left an incorrect impression with this chamber. At the committee hearing, Mr. Watts admitted to not knowing much about the compromise solution. After the hearing, when the compromise solution was made public, he had time to read and digest the proposal. Since that time, there has been no more outspoken critic of the compromise than Mr. Watts. He has called it overly bureaucratic, unworkable and has stated that it would likely prevent most genealogists from conducting their work. I am sure that Senator Murray did not intend to leave this impression, but it did warrant mentioning. Since the compromise solution appears to be a moving target, I am beginning to agree with Mr. Watts' sentiments.

Honourable senators, I do not believe that sending this debate back to the committee will greatly assist this chamber. As I have noted, all the comments that I made during my third reading speech were already on the record long before the committee completed its study of the bill. I have also personally lodged all of these comments and complaints with Dr. Fellegi. As such, I believe this motion should be defeated if there is no time limit set on it. However, as I would personally delight in having Dr. Fellegi appear before the Social Affairs Committee again, since he did not seize the opportunity to do so the first time around, I will support Senator Murray's motion, but only if there are very strict time limits on how long the committee will have before reporting back to this chamber.

Senator Murray told me that he does not want to overly prolong the debate on this bill. I can inform the chamber that I was able to contact Senator Kirby over the weekend, and he indicated that the Social Affairs Committee agenda will be very full right through into the fall, after the summer. However, it has a free day on Wednesday April 17, when we return. He is agreeable to attempt to have Dr. Fellegi appear before the committee on that day.

•(1820)

MOTION IN AMENDMENT—BILL REFERRED BACK TO COMMITTEE

Hon. Lorna Milne: Honourable senators, I therefore move that Senator Murray's motion be amended to state as follows:

> That Bill S-12 be not now read a third time but that it be referred back to the Standing Senate Committee on Social Affairs, Science and Technology for further study; and
>
> That the committee report its findings to this chamber no later than Tuesday, April 30, 2002.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Milne, seconded by Honourable Senator Rompkey, that the bill be read the third time.

It was then moved, in amendment, by the Honourable Senator Murray, that the bill be not now read the third time but that it be referred back to the Standing Senate Committee on Social Affairs, Science and Technology for further study.

It was further moved, in amendment to the amendment, by the Honourable Senator Milne, that Bill S-12 be not now read the third time, but that it be referred to the Standing Senate Committee on Social Affairs, Science and Technology for further study and that the committee report its findings to this chamber no later than Tuesday, April 30, 2002.

Is it your pleasure, honourable senators, to adopt the motion in amendment to the amendment?

Hon. Lowell Murray: Honourable senators, I shall leave aside the procedural question of whether it is in order for an honourable senator to amend her own motion. I realize that Senator Milne is proposing to amend my motion in amendment to her motion. I do not know whether that is in order. Senator Milne may wish to have someone else sponsor the sub-amendment.

As to the substance of the matter, as I indicated on an earlier day, on the assumption that this arrangement is convenient to the committee, and that committee members can live with this, considering their workload, I have absolutely no objection and quite agree to the reporting date of April 30, 2002.

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

Hon. Senators: Agreed.

Motion in amendment agreed to and bill referred back to the Standing Senate Committee on Social Affairs, Science and Technology.

NATIONAL ANTHEM ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Banks, for the second reading of Bill S-39, to amend the National Anthem Act to include all Canadians—(*Honourable Senator Johnson*).

Hon. Janis G. Johnson: Honourable senators, I wish to add my voice to the debate on Bill S-39, to amend the National Anthem Act to include all Canadians.

The Honourable Senator Poy has made admirable arguments on the subject of Bill S-39. The Honourable Senator Beaudoin has offered constitutional analysis that shows the bill to be in keeping with our Charter of Rights and Freedoms. Senator Beaudoin pointed out that it is the duty of honourable senators to pass this bill to amend the English version of the first version of the national anthem to bring it into line with the Charter.

Honourable senators I should like to add the perspective of a woman who grew up in the 1960s. It is unbelievable to us now, but the social climate back at that time was such that, upon finishing my political science degree at the University of Manitoba, I was not allowed to even apply for a Rhodes Scholarship to Oxford in 1969 because I was female.

Like most women here, I had to work hard to advance in the restrictive professional world of the 1970s and 1980s, when women were channelled into work as secretaries, nurses and teachers, and to succeed elsewhere was rare.

Canada has seen great gains in the area of gender equality since those days, and thank goodness. Nearly half of the lawyers and doctors now entering these professions are women. More women are enrolled in universities than men. It is now acceptable for women to dream of any professional life and take the steps to make those dreams come true. My nieces are growing up expecting that they can be whoever they are and become whatever they like, the same way my son has.

Lest we think the challenge is over, consider that only five years ago, on average, women were still earning 64 per cent of what men earned in a year. Even when the category of part time work is eliminated, which women often prefer because of its greater flexibility, women were still earning only 73 per cent of what men earned in comparable full-time, full-year positions.

A large number of women are still concentrated in the so-called pink-collar ghetto, in positions with little responsibility, power or room for advancement. Women are still primarily responsible for the care of their families, even when they are in the midst of demanding careers. In 1997, women were still doing roughly two hours more of unpaid work than men per week, despite being in the workforce in nearly equal numbers. Women's share of unpaid work has remained stable since the early 1960s.

These responsibilities, along with the breaks in career development that come with childbearing and family care make it difficult for women to advance in the professional world under its current constrictive, linear work-life structure. That is why women are not rising naturally to the top levels of the professional world where the decisions are really made. Look around you, honourable senators. In our numbers, we will see proof enough of that.

Of the largest 500 companies in Canada, women head only 2 per cent. Equity policies are helping to balance things out in the workplace, but despite having come so far, we are not there yet.

My point, honourable senators, is probably clear: We have become complacent. The fight for gender equality, not only for women's rights, is far from over. We have become complacent under the illusion that there is no longer a problem and that women and men are truly free to pursue any kind of life they choose.

One effort that has taken us this far was, the trend toward inoffensive or so-called "politically correct language." People tired of the effort involved in changing their language to reflect our ideal values forged this trivializing term. The practice of changing our language to include women started in the 1970s as a positive way to encourage us to begin to think differently, and to think about equality. By including women in our language, we were affirming their importance in our society and denying that men were the sole active ingredients.

It is important to remember, honourable senators, that if we change the language, we will change the attitude. Important gains were made when Canada recognized that "man" was not a gender-neutral term. We are currently living under a lengthy backlash against political correctness, part of the growing pains that come with any important and fundamental change to the way we think. Change is never easy, but without it we cannot move toward a more just society, the prime function of the legislation we review everyday. Making society more just is what we do here. Bill S-39 is part of that movement toward making our society more equitable, more open and more just. It is an attempt to see an important national symbol reflect what we all agree is an important tenet of our social ideology.

•(1830)

It is important to note that in preparing this bill Senator Poy, received many testimonials from both men and women who wanted to see the national anthem changed. This is not meant to be a battle of the sexes. It is not about making gains for women at the expense of men. It is simply an attempt to include all the people who live and work and raise families in Canada and to recognize them equally.

I want to address two of the arguments that have cropped up in our deliberations. The first is the argument for tradition. It has already been pointed out that tradition will, in fact, be honoured by the proposed wording, as it harks back to the original translation of the song's lyrics. It is not as though we are meddling with history any more than those who, as Senator Poy mentioned, changed the lyrics many times over the years before the song's elevation to our official anthem. The precedent is already there, and in returning to the original version we are, in fact, confirming the very deep roots of this song in our national consciousness, as well as including, once and for all, all Canadians.

There also seems to be some contention about the fact that Bill S-39 does not attempt to change the French-language version of the lyrics, which contains non-inclusive language as well. However, the first verse in French does not include any questionable lyrics from a gender perspective, and this bill deals only with that verse in the English version, the only verse commonly sung as our national anthem and hence the most important in the anthem's capacity as a national symbol.

I thus believe, honourable senators, that this is a non-issue. If in the future an honourable senator or member of Parliament in the other place wishes to introduce a bill to amend further verses in English or in French to make them more gender neutral, I would happily support it. However, I feel it is most important that the verse that many of our children and grandchildren sing every morning at school reflects the fact that we all feel patriot love for this land.

Finally, I believe there is an argument against the provision of Bill S-39 that, if we make this one change, we open the door to many more. All I can say to this, honourable senators, is that the right thing to do is not always easy. In fact, it rarely is. That does not, however, make it any less the right thing to do.

In conclusion, I lend my unstinting support to this bill. It proposes a very small amendment that will make a very big difference.

On motion of Senator Corbin, debate adjourned.

STUDY ON EFFECTIVENESS OF PRESENT EQUALIZATION POLICY

REPORT OF NATIONAL FINANCE COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the fourteenth report of the Standing Senate Committee on National Finance entitled: *The Effectiveness of and Possible Improvements to the Present Equalization Policy*, tabled in the Senate on March 21, 2002.—(*Honourable Senator Murray, P.C.*).

Hon. Lowell Murray moved the adoption of the report.

He said: Honourable senators, the hour is late, so I will try not to keep you long.

Fiscal federalism is in the news again. That should surprise none of us; it is a recurrent issue. However, it has been in or near the headlines in the past few days on the occasion of the tabling in Quebec of the report of the Commission on Fiscal Imbalance. This was a commission appointed by the Quebec government, a commission headed by a former Liberal member of the National Assembly, Mr. Yves Séguin.

The commission brought in a report that has been welcomed by both the Parti Québécois government and the Liberal opposition in that province; in other words, by both sovereignists and federalist speakers in Quebec.

It has been noted by, among others, journalist Don Macpherson in the Montreal *Gazette* that the Séguin report is an eminently federalist document that now has the support of a sovereignist government. However, while the Quebec government might prefer another option, they are quite happy to work within the present system for its improvement and certainly for the improvement of Quebec's lot in it.

I note that very early on the Séguin report states that fiscal imbalance has been one of the major issues of the Canadian federation since the mid-1990s. The report goes on to refer to the cutbacks by the federal government to the CHST in the mid-1990s.

I would say that the issue of fiscal imbalance has much more history than the Séguin report would have us believe. It is probably as old as Confederation itself. I am certainly old enough to remember something called the federal-provincial tax structure committee established during the Pearson years to analyze and try to confront precisely this problem. The problem I am speaking of is that of a rate of increase in projected federal revenues that seems to be much faster and steeper than the rate of increase of federal spending obligations as against a rate of increase in projected provincial revenues that would be much slower than the rate of increase of provincial spending obligations.

That problem righted itself to some extent in subsequent years, but here we are now back again with the Séguin report. That commission engaged the Conference Board of Canada to do a study. The study done by the Conference Board confirms and reinforces all the worst suspicions of the Government of Quebec, for it purports to show that over a period of the next 20 years there will be very considerable surpluses piling up in Ottawa because Ottawa's revenues will greatly exceed its spending obligations, whereas, at least in the case of Quebec, and inferentially I would say for most other provinces, there would be a succession of quite large deficits over the 20-year period because provincial revenues will be increasing so much more slowly than provincial spending obligations, notably in the fields of health and other social expenditures that are the responsibility of the provinces.

•(1840)

Honourable senators, all that is a rather lengthy preface to say that this was not the problem the Standing Senate Committee on National Finance addressed. Equalization may have a role to play in any future approach to the imbalance problem, but this was not the issue that we did address.

To the extent that the Séguin commission considered the federal equalization program, it did so by pointing to three inadequacies or failings in the program. The first was the existence of a five-province standard to calculate the so-called national average fiscal capacity. The second was the artificial ceiling placed by the federal Parliament on annual increases in equalization. The third was the unwelcome surprises that are sometimes in store for provinces as a result of changes in methodology at Statistics Canada, the Department of Finance or wherever.

As it happens, the Séguin commission report came out almost at the same time our report did. I had not had an opportunity to read — nor do I believe other members of the committee did — the Séguin report, but I think it is important to make the point — and I trust Quebec will be pleased — that our committee had addressed these three problems directly and had made recommendations. Those recommendations are as follows: one, to go to a 10-province standard in calculating the national average fiscal capacity; two, to remove the ceiling imposed by the federal government and Parliament on annual increases in equalization; and three, to insist on consultation with the provinces and advance notice should changes in methodology be brought in that would affect the entitlement of provinces.

Since we tabled our report, I am very gratified to see that it has received quite positive response from provincial governments. Obviously, we did not adopt all of the recommendations that some of the provincial governments and their spokesmen had put before us; nevertheless, all in all, their response has been quite favourable.

New Brunswick Premier Bernard Lord, according to a dispatch from that province, welcomes the report. He says that it is what he has been talking about for two or three years, and then adds that the committee members took their time. Premier Lord said that committee members listened to a lot of witnesses and that they understand Canada. According to Mr. Lord, that is what the Senate is there for.

I am pleased to see that Premier Lord has a concise and coherent view of the role that this chamber plays in our parliamentary system and federation.

A dispatch from Prince Edward Island read that our committee is backing a call by P.E.I.'s premier for changes in the federal equalization system. Premier Binns says that the current system is unfair to the Island.

According to reports, the premier of Nova Scotia, John Hamm, said he got some good news from the Senate. He said that a report on equalization from the upper chamber supports the principle of the campaign for fairness.

I should tell honourable senators that Premier Hamm telephoned me on Friday, the day after the report was tabled, to congratulate the committee and to thank committee members for this report. Premier Hamm then followed this up with public statements and with a letter to me, copies of which I am sending to all members of the committee. I would be willing to table the letter here, if such is desired.

Premier Hamm welcomes our call for the adoption of a 10-province standard of the program and for the permanent removal of the ceiling on payments. He says that these have long been positions put forward by the Council of Atlantic Premiers. He also expresses his approval that the committee has recognized the need of the provinces of Nova Scotia and Newfoundland and Labrador to be the principal beneficiaries of their offshore resources. In particular, he agrees with our statement that the problem must be addressed within the offshore accords with the affected provinces or through some existing or new programs, not through changes to the equalization program.

This was followed up again by some material sent to me by his officials, including the statement that Prime Minister Trudeau made on July 16, 1980, on the issue of offshore resources. It is perhaps worthwhile to put it on the record. Prime Minister Trudeau said that "the commitment we have made regarding the offshore is that until the provinces with resources off their shores have reached the average income in Canada, we intend to see that they get the overwhelming part of the resources from the offshore."

As honourable senators will be aware, that was the spirit that animated the various offshore accords, including those that were negotiated by the successor government of Prime Minister Mulroney with the provinces.

Premier Hamm makes the point with me, and in this letter, that Nova Scotia had never advocated changing the equalization formula to exclude resource revenues. Indeed, a review of the evidence before the committee, and in particular the testimony of Premier Hamm's finance minister, Mr. LeBlanc, confirms that. They were not calling to have offshore resource revenues excluded from the equalization formula. This was a proposal put forward by others and urged upon us by some academic commentators, but Premier Hamm makes the point that it is not his or his province's position.

One other matter that Premier Hamm drew to my attention, and that I think I had better draw to yours, is that on page 10 of our report, in discussing the Canada-Nova Scotia offshore petroleum accord, we make the following statement about the accord:

> Although the resources belong to the federal government, it was agreed that the province could tax them as if the province was the sole owner.

Premier Hamm was at some pains to remind me, and I shall remind you, that Nova Scotia has never conceded that point. First, it is important to mention — he had his Justice Department write to me on this — that, unlike British Columbia and Newfoundland, the legal status of the Nova Scotian offshore has never been finally determined by the courts. Through the Offshore Petroleum Resource Accord — the accord with Nova Scotia — both Canada and Nova Scotia agreed to set aside the title issues, so that the matter has never been completely resolved.

Nova Scotia's position, if you want a layman to put it in a nutshell, is, first, Nova Scotia had certain boundaries coming into Confederation; they were the boundaries of the old colony. The boundaries have not changed since Confederation; therefore, Sable Island and its territorial sea as well as the southern half of the Bay of Fundy are within the province of Nova Scotia. Then, of course, they remind us that they have a moral and legal argument that dates back to the creation of the colony through the grant to Sir William Alexander under King James VI of Scotland — or King James I of England, if you refer — in the 17th century. I will not dwell on that matter beyond putting it on the record, as I think I am duty bound to do, in view of Premier Hamm's call to me and the subsequent correspondence I had from his legal advisers.

Let me remind honourable senators that this study by the National Finance Committee was undertaken at the initiative of our friend Senator Rompkey of Newfoundland and Labrador. The occasion for that, some months ago, was a bill that was before us at the time from the Minister of Finance, Mr. Martin, to remove the ceiling on increases in equalization for one year. There was also hovering in the background some political controversy about what some people thought they heard the Prime Minister say at the time he and the provincial premiers struck their deal on health care. Some thought they heard him say that the government would proceed to remove the ceiling altogether. We did not look into that in committee. It was not particularly part of our mandate, but whatever the facts are, the Senate agreed to give this mandate to our committee and we pursued it conscientiously and as diligently as we could. The terms of reference, I remind honourable senators, were to consider and make recommendations on the effectiveness of and possible improvements in —

•(1850)

[*Translation*]

The Hon. the Speaker: Honourable senators, I regret to inform Senator Murray that his time has expired.

Honourable senators, do you consent to an extension?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would agree to allow Senator Murray the time required to finish his remarks.

[*English*]

Senator Murray: Honourable senators, I have only a few more points to make. I mentioned our terms of reference. We believe — and I certainly believe — that this equalization program is one of the pillars of Canadian federalism and it goes right to the heart of our concept of Canada. Without these unconditional grants enabling the less wealthy provinces to provide services of comparable quality at reasonably comparable rates of taxation, Canada would be a far different country than it is today. We would have enormous disparity in the quality of services being offered by provinces in fields from highways to education to everything else for which they are responsible. I

agree that the program and the formula are complex. When Mr. Martin appeared before our committee on this bill, he said that when he came to the department as minister there was one person in the department who truly understood the way the formula works. Unfortunately, that person had left the department in the interim. The message he was leaving is that no one understood it completely. It is really not that complex.

After a lot of study and discussion, we were of the view that it would be a serious mistake to take on unnecessary risks with this program and we tried to reflect that in formulating our recommendations. I do not believe we should tinker or tamper with a program such as this because it could so clearly have unforeseen and negative consequences. I believe most of the provinces agree with that position. We looked at some of the ideas that seemed so attractive that some of us started with a bias in favour of these more radical ideas. However, as time went on, and we looked at both the intended and possibly unintended consequences, we decided that the course of prudence was the one that recommended itself to us and the one that we should recommend to the Senate.

We are proposing some improvements to the program to remove several provisions, such as the ceiling and the five-province standard, which we believe are inconsistent with the principle of equalization. If this had happened beginning in 1982 and 1983, it would have cost $3.2 billion to take the ceiling off. Furthermore, it would have cost $31 billion if we had gone to a 10-province standard over the past 20 years. The federal treasury was saved some money but, as we point out in our report, the ceiling and the five-province standard places a burden on recipient provinces, thereby resulting in reduced services for Canadians in some provinces.

Honourable senators, I hope that the government will act on this report soon. This report does not require extensive study or analysis by the government because we are not proposing major changes to the concept or to the formula. These are changes that, by all future projections, are well within the fiscal capacity of the federal government. The statement that I just made is well founded in historical experience. We have a table — and, I think it is Table II on page 17 — that shows that, over time, the growth of equalization entitlements has tracked the growth in federal revenues year after year. Almost always, the rate of growth of equalization entitlements has been less than the rate of growth of federal revenues.

These, honourable senators, are responsible and prudent recommendations which, if implemented, will improve important provincial services to our people and contribute to the cohesion and unity in our federation. I very much look forward to hearing some debate on this report in the days to come.

On motion of Senator Rompkey, debate adjourned.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TWELFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the twelfth report of the Standing Committee on Internal Economy, Budgets and Administration *(budgets of certain committees)*, presented in the Senate on March 21, 2002—(*Honourable Senator Kroft*).

Hon. Norman K. Atkins moved the adoption of the report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

THIRTEENTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the thirteenth report of the Standing Committee on Internal Economy, Budgets and Administration (*salary increase for unrepresented employees*), presented in the Senate on March 21, 2002—(*Honourable Senator Kroft*).

Hon. Lorna Milne, for Senator Kroft, moved the adoption of the report.

She said: Honourable senators, I believe I should say a few words about this report. The report before you seeks to provide a 3.2 per cent increase to our unrepresented employees. This increase will maintain parity with those provided to unionized Senate personnel as well as to other employees working on the Hill.

•(1900)

Honourable senators may recall that a collective agreement was signed in the fall with the Senate Protective Service Employees Association, which provided increases of 3 per cent effective January 1, 2001, and 2.5 per cent effective January 1, 2002. In addition, employees represented by the Public Service Alliance of Canada negotiated an agreement, signed in January of this year, which provided increases of 3.2 per cent effective June 1, 2001, and 2.8 per cent effective June 1, 2002.

Based on these facts, I urge honourable senators to support the adoption of this report.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

STUDY ON CANADA'S HUMAN RIGHTS OBLIGATIONS

REPORT OF HUMAN RIGHTS COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Human Rights, entitled: *Promises to Keep: Implementing Canada's Human Rights Obligations*, tabled in the Senate on December 13, 2001.—(*Honourable Senator Andreychuk*).

Hon. A. Raynell Andreychuk moved the adoption of the report.

She said: Honourable senators, I rise today to speak to the second report of the Standing Senate Committee on Human Rights. Last year the Senate authorized the committee to pursue the general mandate of examining issues related to human rights and, *inter alia*, to review the machinery of government dealing with Canada's national and international human rights obligations. Since that time, the committee has identified some of the most fundamental human rights issues facing Canada today. The culmination of the efforts of all those involved in the work of the committee finds its expression in our second report that was submitted to the Senate last December.

First, I wish to express my appreciation to all those who contributed to the work of the committee and its report. In particular, the input provided by the witnesses who appeared before the committee made an inestimable contribution to the contents of the report. The depth of knowledge and understanding on the subject of human rights that they shared with the committee members was without equal. The members maintained a privileged opportunity to learn about the machinery of government and human rights in Canada from the evidence provided by these witnesses.

The members of the committee, from their own perspectives and experiences, also provided invaluable input in respect to the elaboration of the report. The expertise, experience and intelligence that they shared throughout the proceedings added to the depth of the debate and to the wisdom of the report's final recommendations.

As I have already mentioned on a number of occasions, I wish to thank the former deputy chair, former senator Finestone, for her efforts in advancing the human rights agenda. I should also like to draw attention to the invaluable work that Senator Wilson has brought to the committee. Her promotion of international human rights and social concerns, as well as her strength in drawing together civil society into the human rights debate, will be truly missed by all. Her no-nonsense style, her impatience with words, her zeal for action and her commitment to a better Canada was a significant cause for the rapid advance of our agenda.

I must also mention the fine work of Mr. David Goetz, the committee's researcher, and Mr. Till Heyde, the committee clerk. They succeeded in assembling a solid report in little time. I am grateful for their excellence and dedication.

We are on the threshold of important changes within the field of human rights. When listening to the various witnesses who appeared before us, we perceived a great sense of enthusiasm that a Senate committee was dedicating its work to the study of human rights. The enthusiasm is well placed. The committee is filling an important gap that until now has not been taken up by a parliamentary committee, this being the study of the machinery of government as it relates to Canada's national and international human rights obligations and Parliament's role in this process if democracy and good governance are to mark Canada in the future.

The second report of the Human Rights Committee identifies the fundamental issues that arise in this discussion. The issue of the machinery of government vis-à-vis human rights comes at a critical juncture in our history. Globalization raises ever-increasing challenges to the gains that have been made in the field of human rights over the past 50 years. Such challenges appear to rise in proportion to the pace that technology, international trade and international travel, to name but a few elements, draw the people of the world increasingly closer together. Human rights remain fragile in this climate of constant movement of people. Such a flow brings both the best and the worst that result from globalization. It is with all of these elements in mind that the need to recognize the significance of human rights instruments becomes apparent. It is curious to me that the debate universally today — or at least that which gets attention in the press — is the worry of a globalized world trade process, while at the same time the urgency of a world court, a global front on terrorism, anti-crime, et cetera, is occurring. Globalization is both trends. Our committee is struggling to find the right balance for the furtherance of human dignity, human worth and peace.

The challenge that lies before us involves recognizing that democracy, the rule of law and human rights are all precious institutions that must be preserved even in times of adversity. As paradoxical as it may seem, a fine balance must be struck between adopting laws that strive to preserve these institutions and preserving the institutions themselves. We cannot throw out the hard-fought gains that we have won over the years by adopting laws that claim to protect these gains but, in reality, actually undermine or destroy them. Such a direction runs counter to the significant contributions that this country has made in the field of human rights. As Canadians, we pride ourselves on the historic leadership role that our country has taken on in promoting human rights. We must continue to pursue this role.

We have a long history of advancing the human rights agenda. Canada played an instrumental role in the elaboration of the Universal Declaration of Human Rights. In 1960, we adopted the Canadian Bill of Rights. We shall be celebrating the twentieth anniversary of the Charter of Rights and Freedoms this coming April 17. Thus, by the end of the millennium, Canada had become a world leader in the field of human rights and a credible example for other countries. However, there is always room for improvement, and one can go so far as to state that there are certain fundamental adjustments that we should make and can make in order for Canada to live up to our commitments in this area. Perhaps they are nuanced and lesser than some state, but nonetheless our gains need to be built on.

•(1910)

Over the years, human rights have gone through several phases. The first phase recognized human rights as a concept and saw to the protection of these rights within the legal framework of the state. In the second phase, human rights were further refined and international instruments came into force that were intended to secure benefits to all people of the world. We are now entering into a third phase of evolution of human rights, whereby we strive to live by the word of the commitments laid out in the various human rights instruments we have elaborated. This third phase represents Canada's present challenge in keeping pace and growing with the ever-evolving field of human rights.

The committee's second report identifies certain critical areas where Canada has not entirely kept abreast of developments in the field of human rights. If the gap widens between the manner in which some countries have developed their human rights laws and Canada, our role as leader in the field could be seriously undermined. Some of the witnesses who testified before the committee have already observed the repercussions flowing from Canada's lack of visibility in certain international human rights fora. One important cause for concern is that, over time, future contributions proposed by Canada in the international arena may well fall on decreasingly receptive ears.

A diminished presence for Canada in international human rights fora translates into a decrease in our ability to advance the human rights agenda. Our commitment to human rights defines the leadership role we play on the international stage in this area. Several witnesses before the committee explained that Canada's voice does not resonate to its full potential and needs to be enhanced.

Our diminishing voice in the international arena is not the only area that needs improvement. One particular area of concern, if not the major concern identified by many of the witnesses, relates to the lack of implementation into national law of treaties to which Canada is party. This country has ratified over 400 international instruments dealing directly or indirectly with human rights. However, in many cases, the rights outlined in these instruments have not been implemented into national legislation. Most western countries, unlike Canada, have developed mechanisms whereby ratified treaties are integrated into the law of the land. Some countries even accord constitutional status to these ratified treaties. If one compares such countries to Canada, one realizes there are definite initiatives we must adopt in order to give true effect to the international instruments we ratify.

Our system grants the executive the power to sign and ratify treaties. However, only the legislator has the power to adopt bills that will transform such instruments into legally enforceable laws. More often than not, we do not adopt such enabling legislation. In this way, Canada often does not live up to the commitments made before the international community. The treaties that we ratify are not implemented into national law and therefore are not legally enforceable within our borders, at least not easily.

No doubt, in many cases the federal nature of our country complicates adopting enabling legislation. International treaties ratified by Canada often maintain commitments that have an impact on federal or provincial jurisdictions, or both. However, the complication is not an insurmountable obstacle. Many witnesses appearing before the committee proposed mechanisms whereby the provinces and the federal government would act in concert to ensure that international commitments engaged in by Canada would be transposed into enforceable federal and/or provincial laws.

It is important that Canada develop mechanisms that implement into national law the human rights commitments we have made before the international community. To do so would offer Canadians greater protection of the rights contained in the international instruments this country has ratified. Canadians maintain a strong commitment to the inherent dignity of the individual; therefore, we must ensure that our international human rights commitments are translated into enforceable national law. By this undertaking, Canada would ensure that the people of this land would have access to the courts in order to protect the rights set out in those instruments.

A common thread ties together the recommendations contained in the report. This thread underscores the idea that Canada's human rights commitments must be enhanced both internally and externally. Therefore, the report recommends that Canada improve the process by which we report to treaty bodies to which we are a party, improve the manner in which the treaty-making process progresses, strengthen or replace existing mechanisms of treaty implementation and explore the possibility of creating a new structure where we would debate whether this country should be a party to a given treaty.

This is not an exhaustive list. The report makes a number of other recommendations on how to arrive at a more matured human rights apparatus in Canada, including granting Parliament and civil society a greater role in discussions and decisions concerning human rights.

As parliamentarians, we are in a unique position to steer the debate that will set Canada on the course of the third phase to which I referred earlier. We will then be able to live by the human rights commitments we have made both to Canadians and to the international community. We offer a forum for open debate. We are accountable to the Canadian public and are responsible before the nations of the world. Parliamentarians play a pivotal role in bringing together the entire spectrum of society's competing and complementary interests that arises when balancing human rights with other priorities of society.

As parliamentarians, we reflect the values of Canadians, values that recognize that structures must exist in order to safeguard the inherent dignity of the individual. To better ensure the protection of this inherent dignity, it is important to anticipate the human rights issues that will arise in the future. Parliamentarians, as representatives of the Canadian people, are in a unique position, allowing us to keep an accurate pulse of the nation. We, therefore, maintain a perspective on human rights that includes all the people of this country and that can anticipate issues yet to become a focus of concern.

I invite honourable senators to acquaint themselves with the second report, in order to gain a clearer idea of the issues at hand in the present debate and, therefore, be in a better position to evaluate the support that the committee will seek from this chamber in the months to come.

We all share the responsibility owed to Canadians and the international community alike to continually enhancing the dignity and worth of all human beings. I am confident that the work of the Standing Senate Committee on Human Rights will be able to offer a modest contribution to this cause.

As we are here in this chamber, so is the United Nations Human Rights Commission beginning its work. It is historic that Canada will be at the table at the Human Rights Commission while the United States, for the first time, will not. Canada will play an increasingly stronger role and we must rise to the occasion by developing new instruments, new awareness and new dedication.

I am confident the members of this chamber are behind the standing committee.

Hon. John G. Bryden: Would the honourable senator accept a question?

•(1920)

The Hon. the Speaker *pro tempore***:** Honourable Senator Bryden, Senator Andreychuk's time has expired.

Is the Honourable Senator Andreychuk requesting leave to receive a question?

Senator Andreychuk: I would seek leave to entertain the question of Senator Bryden.

The Hon. the Speaker *pro tempore***:** Honourable senators, is leave granted for one short question?

Hon. Fernand Robichaud (Deputy Leader of the Government): I would agree to leave for one question and a short answer.

Senator Bryden: I have only one question, and I will try to formulate it as well as I can.

Does the honourable senator think that it adversely affects Canada's role on the global stage in relation to human rights in various nations that Canada has not been able to solve its own problem of human rights as it pertains to certain minorities? In particular, I am thinking of those classes of people who represent a disproportionate number of people who are incarcerated, of people who are poor and of children who are born with fetal alcohol syndrome. Does the honourable senator think that before truly searching out the mote that is in other nations' eyes, Canada needs to take the beam out of our own?

Senator Andreychuk: I thank the honourable senator for his question because that is the conundrum that the committee is facing. In Canada, we have a record that I believe is enviable in our attempts to deal with our problems. We have been extremely transparent and open to criticism and to observation by other countries to comment on our situation.

It is precisely because of that openness that we are credible players on the international stage. We do not come to the table with all the answers. We do not come with an unblemished record; rather, we come to the table with all of our problems. We sit at the table and say that only an international community can deal with the issues. No one is exempt from being at the table; no one is exempt from scrutiny. We all have to contribute to the international agenda.

Regardless of which government has been in power, that has been the commitment of all Canadians. The Human Rights Commission has had more individual complaints against Canada than virtually every other country. To that we say: That is the only way it can be addressed — in the community of persons. That is where the United Nations' universal declaration comes into play. It is not good enough to say that we will clean up our borders and then we will consult others, because the borders are transparent. It is a global world and has been for many decades.

Our concerns cannot be for Canadians only or for the international population only. That is why the committee is increasingly looking at marrying what we have in Canada as instruments for furthering human rights for Canadians and testing them against the international instruments. Sometimes our examples are an inspiration to other countries. For example, we have the Charter of Rights and Freedoms.

On the other hand, we know that covenants such as the International Covenant on Economic, Social and Cultural Rights can be instructive to Canadian law in areas where we have fallen short in helping those in need and minorities in our country.

If I make anything out of what the excellent, thoughtful, dedicated witnesses from all walks of life in Canada came to tell us, it is that we must continue to be open and transparent. We also must move to a new generation of national and international perspectives. We have fallen down in not ratifying international instruments. We probably have a higher standard. However, we are finding that our standards are not higher than some of the international instruments, and there is validity in them.

The United Nations is moving, in the next decade, to compel countries to live by their agreements, treaties and covenants. Canada must find the ways and means to enforce international law within our borders. We cannot leave it to the courts, as was done in the *Baker* case that declared Canada has to at least put out a moral obligation that it should live by. We cannot say one thing internationally and then do something else nationally.

My answer is a plea to this chamber and to Parliament that we look at the next decade to improve our national and international positions by putting the two together to find new ways to mature human rights and to make them enforceable. In that way no one is exempt — not in Iraq and not in Canada.

On motion of Senator Fraser, for Senator Poy, debate adjourned.

[*Translation*]

FISHERIES

COMMITTEE AUTHORIZED TO STUDY MATTERS RELATING TO OCEANS AND FISHERIES

On the Order:

> Resuming debate on the motion of the Honourable Senator Comeau, seconded by the Honourable Senator Beaudoin,
>
> That the Standing Senate Committee on Fisheries be authorized to examine and report upon the matters relating to oceans and fisheries;
>
> That the papers and evidence received and taken on the subject during the First Session of the Thirty-seventh Parliament be referred to the Committee;
>
> That the Committee submit its final report no later than June 30, 2003; and
>
> That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the study of matters relating to oceans and fisheries mentioned in this motion does not represent any expenditure out of the ordinary. It would simply allow the Standing Senate Committee on Fisheries to do its work without requiring additional resources.

[*English*]

Hon. Jane Cordy: If it pleases honourable senators, I request leave to ask a question of the Chairman of the Standing Senate Committee on Fisheries, Senator Comeau.

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

Hon. Senators: Agreed.

Senator Cordy: The work done by the Fisheries Committee since I have been here has been of top quality. As a senator from Nova Scotia, I appreciate the reports that the committee has presented to the Senate.

I did notice, however, that the final report must be deposited by June 30, 2003, and it is highly unlikely that the Senate would be sitting at that time. Senator Stratton, Senator Maheu and Senator Bryden raised this issue a few weeks ago. They suggested that perhaps committees could make every attempt to present or table reports when the Senate is sitting, which is not always possible. Would the Fisheries Committee consider an amendment to change the date of reporting to the Senate?

Hon. Gerald J. Comeau: I agree with the honourable senator that we should make every attempt possible to table reports when the Senate is sitting. We owe it to honourable senators that they learn of the report in this place, rather than have them read about it in the newspapers.

I am confident that the members of the Fisheries Committee would agree with me in accepting an amendment to the motion that we table our report by the end of October 2003. If the honourable senator wishes to move the amendment, I would be more than pleased to accept it.

Senator Cordy: I am not a member of the committee. As such, I am not sure that I am permitted to move the amendment.

Hon. Viola Léger: I will second the amendment.

•(1930)

MOTION IN AMENDMENT

Hon. Jane Cordy: I move that the Standing Senate Committee on Fisheries submit its final report no later than October 30, 2003.

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

Hon. Senators: Agreed.

Motion in amendment agreed to.

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

Hon. Senators: Agreed.

Motion, as amended, agreed to.

[*Translation*]

THE SENATE

MOTION TO ESTABLISH SPECIAL COMMITTEE ON SUPPORT FOR LA RELÈVE IN THE ARTS—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette, pursuant to notice given December 10, 2001, moved:

> That a special committee of the Senate be appointed to examine the important issue of providing support for the next generation (La Relève) in the Arts;

That the special committee consist of five Senators, three of whom shall constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence as may be ordered by the committee;

That the committee have power to authorize television and radio broadcasting or dissemination through the electronic media, as it deems appropriate, of any or all of its proceedings and the information it possesses;

That the committee have power to sit during adjournments of the Senate pursuant to Rule 95(2) of the *Rules of the Senate*; and

That the committee present its final report no later than two years after it is appointed.

She said: Honourable senators, in a spirit of cooperation, and knowing that my colleagues opposite are not prepared to sit on this committee, I wish to emphasize the importance of such a committee. I have already spoken with the Leader of the Opposition and with several of his colleagues who are interested in this sector.

The current government has spent an additional $500 million in the arts sector. However, we should not think that this amount has resolved all the important issues having to do with the next generation — La Relève — in the arts. A Senate committee could review the priorities for providing support for the next generation in this area. This is important so that our society can preserve its Canadian identity.

When we speak of the next generation, I should specify that this refers to the artists involved in the performing arts, the writers, the painters, in fact, all those who make a living from the arts and represent the soul of our country. We must realize that, for us to instil love of the arts in our young people, they must come to know more about the means of communication between human beings.

This committee will need to address the threat of the electronic media and cultural homogenization. If we are to preserve respect for our Canadian identity, it is important that our cultural communities take part in this consultation. Our Aboriginal fellow citizens must be consulted, along with the general population, since we have, especially in the anglophone community, a very strong presence right next to us, especially where the performing arts are concerned.

Essentially, the motion addresses a rethinking in this, the 21st century, of the way the arts develop within a country. More funding is required if this essential aspect of our lives is to be able to develop its full potential.

I would encourage my colleagues across the way to give very serious consideration to the establishment of a special Senate committee that would examine the important issue of providing support for the next generation — La Relève — in the Arts.

On motion of Senator Hervieux-Payette, debate adjourned.

[*English*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY IMPLEMENTATION OF STATUTORY REVIEW PROVISIONS

Hon. Lorna Milne, pursuant to notice of March 19, 2002, moved:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the implementation of statutory review provisions contained in selected legislation relating to legal and constitutional matters;

That the papers and evidence received and taken during the examination of such legislation during previous Parliaments, and reports thereon, be referred to the Committee; and

That the Committee submits its final report to the Senate no later than December 20, 2003.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

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Monday, March 25, 2002