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**OFFICIAL REPORT**
**(HANSARD)**

## Tuesday, February 6, 2001

**THE HONOURABLE DAN HAYS**
**SPEAKER**

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# THE SENATE

**Tuesday, February 6, 2001**

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

Prayers.

## THE LATE HONOURABLE CHARLES McELMAN

TRIBUTES

**Hon. John G. Bryden:** Honourable senators, the Honourable Charles McElman, New Brunswick senator, Nashwaak Valley, who served his country with honour and distinction for more than half a century — nearly half of that period in this chamber — died since we last met. Retiring in 1990, his contribution to the public life of his province and country will long be cherished and remembered.

In life, as in death, he was a modest man. His instructions that there be no eulogy at his funeral were honoured. In his January memorial service in Fredericton, the order of service of the Anglican *Book of Common Prayer* was followed. In his homily, the Reverend Barry Crais told those attending:

> In keeping with this modesty, this service is deliberately simple. On more than one occasion Charles McElman told me of his admiration for this form of burial service, which was the same, as he said, "for princes as for paupers."

Honourable senators, the service had to be moved from his home church to a larger one in order to accommodate the more than 400 people who attended to mourn and remember Charles McElman. Representing this chamber were Senator Corbin and myself, and Senator Kinsella and Senator Atkins from the opposition.

There is so much to remember about Charles McElman. His career spanned that of a junior bank employee, wartime service in the Royal Canadian Air Force, Secretary of the New Brunswick Liquor Control Board, Personal Secretary to Premier John McNair, the First Executive Secretary of the New Brunswick Liberal Association in its first permanent party office, Executive Assistant to Premier Louis J. Robichaud, and member of the Senate of Canada for 24 years.

After a devastating defeat of the McNair Liberal government in 1952, Charles McElman worked tirelessly for the next eight years to rebuild the Liberal Party in New Brunswick. Working in partnership with Louis Robichaud, who became party leader in 1958 and premier in 1960, they boldly tackled the deep-seated economic and social problems of New Brunswick, particularly the plight and crisis of rural life. Together they were determined to bring about changes that would bring social justice and equality of opportunity to the people of New Brunswick. The Program for Equal Opportunity, which was developed in the face of fierce opposition by some, stood then and stands now as one of the most innovative social reform programs undertaken in this country.

In 1966, Charles McElman was summoned to the Senate of Canada. He became, to use his words, "a committee man." A stickler for rules and proper processes and procedures, he served throughout his career in the upper chamber on two committees little known outside the Senate: the Standing Committee on Internal Economy, Budgets and Administration, and the Standing Committee on Privileges, Standing Rules and Orders. Over the years, he also served on a number of other committees, including the Transport Committee — so important to Atlantic Canada — the Defence Committee and the Foreign Affairs Committee. He is remembered as being a key member of the Special Committee on Mass Media, which was concerned with media concentration.

The rebel and reformer in Charles McElman came out in the Senate when he battled what was then its most powerful committee — the Banking, Trade and Commerce Committee. He objected to those on the committee with directorships in financial institutions examining bills that affected those same institutions without declaring a conflict of interest. Traditionally, that committee was the only one to exclude senators not on that committee from its *in camera* sessions. Charles McElman successfully battled to have the Banking, Trade and Commerce Committee follow the rules laid down for all committees in the Senate.

Honourable senators, Charles McElman was a strong defender of the role of the Senate of Canada as it existed. However, he said he would defend an elected Senate provided it met the Triple-E concept: elected, effective, equal representation by province. He said he thought this development unlikely, however, with the country's premiers so dedicated to their concept of executive federalism.

Charles McElman never shied away from the designation of "politician." He said:

> I continue to wear the designation of politician as a badge of honour. In my view it is one of the highest callings that anyone can aspire to.

Honourable senators, Charles McElman regarded the future of the Senate with confidence. He noted on his retirement that only nine senators remained who were in the chamber when he was appointed. He said:

> There is an exceptional turnover that does actually occur in this non-elected body. Each infusion of new senators, new ideas and new energies causes a continuing evolvement — dare I say reform — to the important work of the chamber and its many committees.

• (1410)

As for the future, Charles McElman said he was confident the Senate would continue to function well in our bicameral system to the benefit of all Canadians. He said: "It would continue to reform itself from within. It should not delay while awaiting reform from without."

As I said earlier, Charles McElman was a modest man. That is not to say he could not be a tough man in dealing with political issues. There are many still in New Brunswick and elsewhere in this country, friends and foes alike, who bear scars from their political relations with him. Charles McElman, in all things he did, always had the courage of his convictions and what he viewed as the best interests of his party, his province and his country. Most of the time he was right. He was always proud of his earlier days as a consummate backroom political operative. The fact that he was able to evolve to become comfortable in the front room of the Senate of Canada showed his capacity to accept changed roles.

Pierre Elliott Trudeau was Prime Minister for two-thirds of the time Charles McElman was in the Senate. When he retired from the Senate, Prime Minister Trudeau said:

> I soon came to understand what an astute politician Charles McElman is. His integrity is total, as is his unwavering support of the Liberal Party of Canada. I always admired Charles McElman for his excellence.

Louis Robichaud expressed his admiration at the time of former Senator McElman's retirement by saying:

> Never in my life have I met a man so dedicated, so loyal, so courageous, so cooperative, so understanding and so willing to serve the cause of his fellow man. His contribution has been immense.

Former Premier Frank McKenna said, "A team player, he offers views and advice that let the chips fall where they may."

When Charles McElman worked in his home study, he was always in view of a card on his bulletin board with a quote from Adlai Stevenson, which states as follows:

> Democracy is not self-executing. We have to make it work and to make it work we have to understand it. Sober thought and fearless criticism are impossible without critical thinkers and thinking critics.

When he retired in 1990, 14 senators paid him tribute in this chamber. One of them was former Prince Edward Island Senator Lorne Bonnell, who captured much of the essence of Charles McElman when he said:

> Charles McElman was not only a Liberal but a reformer; a man with ideas, prepared to fight for those ideas and a man who not only thought of himself but he thought of the poor, the underprivileged, the disabled and those in need in this country.

Charles McElman loved his family and his devoted wife, Jessie, who predeceased him. His death is a great loss, but we have so much to be grateful for in remembering him and his great contribution to public life.

I suspect that former Senator Charles McElman would have liked us to remember him for one more thing: being one of the most accomplished fly fishermen on his beloved Nashwaak River.

In closing, honourable senators, I want to acknowledge the contribution of Senator McElman's long-time friend and political ally, Wendell Fulton, to these few words of tribute in his honour.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, as indicated by Senator Bryden, a few weeks ago we gathered at Christ Church Parish Church in Fredericton to celebrate the life of our friend, former Senator Charles McElman.

As Senator Bryden said, the format of the funeral ritual was, at Charlie's request, a simple liturgy of the *Book of Common Prayer.* Notwithstanding the presence of several lords spiritual in the persons of the current and former Bishops of Fredericton and a church overflowing with the participation of public and private sector officials, the province bade farewell to one of her most faithful sons.

Born in Devon, on the north side of the Saint John River, at Fredericton, Charlie was a wonderful New Brunswicker and a great Canadian. Indeed, his special tie to our province was symbolized by the fact that his day of birth was June 18, the same day of the year on which, in 1784, at the Court of St. James, there was issued the proclamation which gave birth to the Province of New Brunswick. Educated in New Brunswick, Senator McElman served his country during the Second World War with the Royal Canadian Air Force.

The field of banking and service as secretary of the New Brunswick Liquor Control Board profited from his work prior to becoming a pivotal counsellor and ally to Liberal premiers of our province.

Senator McElman had been a careful political thinker and an astute strategist. As a political scientist, he had recognized that the question of the relationship between political theory and political action has exercised students of politics and political militants since antiquity. "No practice without theory," Charlie would declare — no doubt with the approval of Plato and Aristotle.

The equal opportunity program introduced in New Brunswick by Senator Louis J. Robichaud's government in no small way carried the mark of Senator McElman, who directed operations in the premier's office during that era.

Equally remarkable had been the fortitude and strength of Senator McElman during the Senate inquiry into the concentration of ownership of the media. He would no doubt welcome a renewed study today.

Honourable senators, our friend who sat in this chamber located on the banks of the Ottawa never forgot the solid values he learned as a boy in Devon along the banks of the Saint John. Like the Eighth Duke of Devonshire, Spencer Compton Cavendish, Charlie McElman had frequently held high office in Liberal affairs, but not so much with the orientation of Cavendish's whigs as with the politics of Canadian liberal parties.

A man of conviction but a fair man and one ready to share wise counsel, I recall one of my last encounters with Charlie. It took place along the fish tackle aisle at the Canadian Tire store in Fredericton. Charlie, as indicated by Senator Bryden, was a master fly fisher. He inquired of me if I had been fishing recently. I replied that I had not because I had been too busy, whereupon he advised that any man who was too busy to go fishing is too busy.

In bidding farewell to Charles Robert McElman, we pay tribute to a native of Fredericton, an airman who served his country in a time of need, a political thinker and strategist and an honourable member of this chamber. May he now be at peace in the bosom of Abraham.

[*Translation*]

• (1420)

**Hon. Eymard G. Corbin:** Honourable senators, the Honourable Charles McElman was a distinguished gentleman and a man of principle. He was my mentor in the Senate, even before my appointment to the Senate. As Senator Bryden so eloquently put it, he would have been embarrassed by all the tributes paid to him today.

He was known for his hard work, his loyalty, his strength of mind, his tremendous compassion and his discretion. For the major part of his life, he was a public figure, but he was also a very humble man.

He was a pillar here in the Senate and also in the New Brunswick Liberal Party. He retired early because he loved his family, especially his wife. He truly believed that public life first in New Brunswick and then in Ottawa had kept him away from his dear ones, especially his wife, and he wanted to make up for lost time.

I made it a point of attending his funeral to pay him a personal tribute. He was a wise but firm advisor to me. I owe him a lot. I am very grateful to him, and I will remember him for a long time. I learned a great deal just by watching him take part in our debates and meetings and by following his advice.

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[*English*]

# SENATORS' STATEMENTS

## QUESTION OF PRIVILEGE

### SELECTION OF THE LEADER OF THE OPPOSITION

**Hon. Gerry St. Germain:** Honourable senators, earlier today I gave written notice of my question of privilege to the office of the Clerk. I believe it has been circulated to all senators. I apologize for not providing it in both official languages, but I just do not have the resources to do so.

The six bases for my question of privilege are as follows. First, at page 56 of *Bourinot's Parliamentary Procedure*, it states:

> It has been frequently decided that the following matters fall within the category of breech of privileges:
>
> 1. Disobedience to, or evasion of, any of the orders or rules which are made for the convenience or efficiency of the proceedings of the house.

Second, Joseph Maingot states that, to constitute privilege, generally there must be some improper obstruction to the member performing his parliamentary work in either a direct or constructive way.

Third, discussions have taken place in this chamber regarding my status and the status of the Leader of the Opposition in the Senate. These discussions have not included me and have resulted in a denial of my privileges in this chamber.

Fourth, in 1993, the Speaker of the other place ruled on matters relating to the orders of that place and agreed that they were indeed questions of privilege. The particular situation dealt with the late tabling of a government response to a committee of the other place. In his ruling on April 19, 1993, at page 18106 of the Commons Debates, the Speaker said as follows: "Members cannot function if they do not have access to the material they need for work and if our rules are being ignored..."

Fifth, most members of either chamber would agree with this Speaker's rulings. Of particular importance is the recognition by the Speaker that ignoring the rules of that place constituted a breach of privilege.

Sixth, the particular traditions and precedent being ignored here are related to the first rule of the Senate of Canada.

The very first section of Canada's *Rules of the Senate* states that precedent and tradition are critical elements in any decision made by the Senate that deals with a question not covered in the rules. Rule 1(1) states:

> In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

Our "customs, usages, forms and proceedings" require that we look to three sources for governance of this place. The first place is in the rules themselves. The second is precedent. The third is in the traditions of this place.

Given that we have no rules governing the selection of the official opposition in the Senate, we are required by our own rules to examine the precedents and traditions. There is no precedent for the Senate itself, but precedents from the House of Lords and from the Australian Senate are most clear. The official opposition in the upper chamber is selected with a reference to the party serving as official opposition in the lower chamber.

Finally, we must look to our own traditions. Our own traditions show over 100 years of government and opposition leaders in the other place selecting their respective counterparts in the Senate.

Therefore, the necessary requirements for the selection of the leader of the official opposition in the Senate of Canada are clearly laid before us. I see no rational reason other than "might makes right" for this breach of our rules.

Finally, I ask leave of the Senate to table a research document that will provide the chamber and its officials with the background research on this very important matter.

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

**Hon. Senators:** Agreed.

**Senator St. Germain:** Thank you, honourable senators.

In accordance with the rules, at the completion of the Orders of Day today, I will go into more detail with respect to this issue. I wish honourable senators to know that I am prepared to have this matter referred to the Standing Committee on Privileges, Standing Rules and Orders so that they can examine this and report back.

**The Hon. the Speaker:** Honourable senators, Senator St. Germain has deposited with the Clerk, in a timely manner, a notice of a question of privilege and has called our attention to it under Senators' Statements as required by rule 43. The Senate shall take up consideration of whether the circumstances constitute a question of privilege. This will occur not later than eight o'clock this evening or immediately after the Senate has completed consideration of Orders of the Day for today's sitting, whichever comes first.

We shall now continue with Senators' Statements.

[ Senator St. Germain ]

## THE LATE AL WAXMAN, O.C.

**Hon. Jerahmiel S. Grafstein:** Honourable senators, I rise in tribute to the late Al Waxman. Acting can be the most perilous of professions. An actor's persona becomes someone else's commodity, always at risk to the vagaries of public taste. Choices give way to the imperative of work and work in turn becomes fodder for criticism. To be an actor demands hidden reserves of confidence to overcome obstacles to recognition.

Behind the sparkling smile, Al Waxman husbanded this hidden confidence in abundance. Recently I wrote Al a long, discursive letter about his zestful autobiography. I quickly received a moving and cheery call. Al and I had been friends for over 40 years, since our student days at Western and then at the University of Toronto Law School in the 1950s. When we next met, Al laughingly said to me, "Think of it, Jerry. You are a failed actor and I am a failed lawyer. Now, who has had the more successful career?"

"You, Al," I said, "you, of course."

Back in the 1950s, Al chose insecurity over security, succeeding beyond anyone's imagination except his own. He never stopped working. His career resonated from acting to directing and even to songwriting, from *King of Kensington* to directing *Anne Frank*. From starring in *Death of a Salesman* to the avuncular police captain in *Cagney & Lacey*, Al never stopped improving.

My favourite was his portrayal of the venal Jack Adams in the hockey classic, *Net Worth*. For you see, he was inoculated early with the Talmudic gene for the endless search for personal perfection.

So let us all mark his cenotaph. Rarely does any actor transcend his time and place in Canada as Al did. He was quintessentially Canadian, choosing to live and work here though the lure of New York, Hollywood and even London beckoned. Nothing so exemplified Al's quest for personal perfection than the role he was slated to star in this summer at Stratford. He was to play the controversial Shylock in *The Merchant of Venice*. He reckoned this posed a great critical risk. He was obsessed with striking the appropriate artistic balance, and so he did what he always did: He studied. He was never an accidental artist.

Honourable senators, Al Waxman was more. He owned other gifts. He had the gift of friendship and the gift of giving. There was no charitable event across Canada too large or none too small that he would not help.

• (1430)

Al, like all actors, vacillated between the hunger for celebrity and the hunger for self-improvement. Yet he never wavered in his gift of giving. He lived the Judaic ideal that dictates that charity is the highest human act of all.

May I tell one small political story, honourable senators. In the first Lastman campaign for mayor of Toronto, I asked Al to participate in a cultural task force to craft a cultural policy for the new Toronto. This, I thought, was necessary to counter the overwhelming support that Lastman's opponent was receiving from the cultural establishment in Toronto. Al joined our group with gusto and imagination. When Lastman's campaign badly sagged a week before the election date, Al called and said, "Let me take him out for a walk around Kensington to pick us his spirit and see if we can boost his numbers." Al felt his celebrity would rub off. True to his word, Al did exactly that. He "main-streeted" with Lastman and was instrumental in helping turn around the faltering Lastman campaign. Everyone knew Mel, but everyone loved Al.

The day after the election, Al called me and said, "Now, let's put that cultural policy in practice." He never stopped working.

Al loved his profession, but above all he loved his family. When his wife, Sarah, told me that he had died of heart failure, I told her, "That simply could not be. Al's heart could never fail."

Al, we are still dismayed that you left us so abruptly. We are still angry we were robbed, so prematurely, of your gift of company. So now, all I can say to you is, "Al, go to heaven."

May I conclude with a quote from Scriptures: "See the man who is diligent in his work. He shall stand before kings."

Al did and was.

[*Translation*]

## JUSTICE

QUEBEC—OPPOSITION TO BILL TO AMEND YOUNG OFFENDERS ACT

**Hon. Jean-Claude Rivest:** Honourable senators, I should like to draw your attention to the bill on young offenders, which creates considerable problems in many regions of Canada, but Quebec in particular.

All senators need to be aware of the fact that all professionals working with delinquent youth in Quebec object very strenuously to the contents of the bill to amend the Young Offenders Act, which was introduced in the House of Commons yesterday.

When I speak of professionals, I include not only justices and Crown attorneys, defence counsel and police officers, but also and particularly all the men and women working within government organizations, as volunteers, or in the social reintegration of young offenders.

We can readily understand that a country as large and diversified as Canada can have a number of approaches to the problem of young offenders. I believe the Minister of Justice has a good grasp of the reality, but she also needs to translate that reality into the bill she is introducing in order to allow any provincial government the freedom to adopt a particular approach to juvenile delinquency or to continue the approach it is already using.

In Quebec, honourable senators, the approach to young offenders is far more focussed on rehabilitation. The general philosophy in Quebec has been quite successful; the statistics indicate that there have been absolutely remarkable results with delinquent youth. In fact, those results are the best in all of Canada.

I would call upon the honourable senators to make their colleagues, and the minister in particular, more aware of this reality and of Quebec's objection to certain provisions of this bill. This bill is a federal responsibility, since it falls under the Criminal Code, but it is a social issue above all.

[*English*]

## THE LATE DAVID IFTODY

TRIBUTE

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I rise to speak on the recent death of Mr. David Iftody, the former Member of Parliament for Provencher, who died on Monday at the age of 44 from an apparent stroke.

Many of us knew David in his capacity as chair of the Liberal rural caucus and as a member of the Standing Committee on Industry in the other place. David came to see me while I was the leader of the Liberal Party of Manitoba to discuss his decision to run in the Provencher constituency in eastern Manitoba. It was not a traditional Liberal riding. In fact, it was held for many years by the Honourable Jake Epp. However, David was energetic and enthusiastic about his chances because Mr. Epp was stepping down. As it turned out, he was right.

David was dedicated to the needs of his constituency from the time he was first elected in 1993. He loved being a member of Parliament and gave it his all, both of his time and of his effort.

A social worker by profession, David worked for many years at the Manitoba Youth Care Centre and was always interested in keeping in touch with young people and involving them in the political process.

During the Red River floods of 1997, many of us remember seeing David on television and in the newspapers working side by side with the people who lived in the flooded communities — his communities — and serving as a strong voice on their behalf during those difficult times. David was very involved with his riding and with his constituents. He was proud to represent them and to work on their behalf.

David's death, coming as it did without warning and totally unexpectedly, reminds us all to treat each day as something important and of value. David did, and I believe he would want all of us to do the same.

I extend my condolences to his very extended family.

Rest in peace, David.

### CAMPAIGN FOR FAIRNESS BY PREMIER OF NOVA SCOTIA

**Hon. Donald H. Oliver:** Honourable senators, one of our responsibilities under the Constitution Act is to represent the interests of the regions of Canada. With that in mind, I am pleased to call the attention of honourable senators to a campaign of fairness launched by the Premier of Nova Scotia, the Honourable John F. Hamm. The purpose of this campaign is to urge the federal government to fulfil its obligations under section 36(1) and (2) of the Constitution Act, 1982. Nova Scotia is not seeking special treatment but wants to ensure that the Canadian government honours its constitutional commitments and agreements with the province.

Last November, honourable senators, Atlantic premiers sent a joint letter to the Prime Minister outlining the region's concern that the equalization program has not been fully realized. The fiscal capacity of Atlantic provinces is still 7 per cent below those of others. This disparity damages the ability of Atlantic provinces to offer services comparable to those provided in other provinces. The Atlantic premiers have called for consideration of three fundamental initiatives: the adoption of a national average standard for equalization, which would thereby assure that the program is truly committed to equalization; the removal of the GNP ceiling on equalization payments; and finally, broadening of the revenue coverage of the program, which would include user fees as a revenue source.

These initiatives will improve the equalization program, an improvement that would add an additional $248 million to Nova Scotia's treasury. The initiatives would also empower the Atlantic provinces to provide comparable qualities of public service.

Apart from the equalization program, Nova Scotia's concerns also relate to the benefits of the offshore resources. The province feels it should be a principal beneficiary of any resources off the shore of the province, as outlined in the Canada-Nova Scotia Offshore Petroleum Resources Accord of 1986.

Honourable senators, Nova Scotia and the Atlantic provinces should be supported in every effort that would decrease dependence upon federal funding and transfers. Premier John Hamm will be speaking at the National Press Club's Newsmaker Breakfast tomorrow, February 7, on the subject of his campaign for fairness. I urge all honourable senators to attend so that they can understand the significance and lend their support to this important initiative.

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, I regret to advise that the time for Senators' Statements has expired. I have on my list Senators Fairbairn, Spivak and Johnson. I anticipate that some of them wish to speak out of respect for our former colleague.

The rule is very strict on Senators' Statements. However, it does provide that either whip might approach the Chair for an extension of time. In the absence of that, I have no choice but to move on to the next item.

• (1440)

**Hon. Mira Spivak:** Honourable senators, I wish to ask leave to pay tribute to David Iftody.

**The Hon. the Speaker:** Honourable Senator Spivak, the rule is very clear. Time has expired. We can return to Senators' Statements tomorrow, but we are unable to do so today.

**Senator Spivak:** I wanted simply to ask leave to say a few words of tribute to David Iftody.

**Some Hon. Senators:** Tomorrow.

**The Hon. the Speaker:** I cannot accept that request under Senators' Statements, Senator Spivak. I am bound by the rules. This is a matter on which we have spent considerable time and to which my predecessor and I are sensitive in terms of our desire to limit the time and length for Senators' Statements.

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[*Translation*]

## ROUTINE PROCEEDINGS

### CANADA BUSINESS CORPORATION ACT CANADA COOPERATIVES ACT

BILL TO AMEND—FIRST READING

**Hon. Fernand Robichaud (Deputy Leader of the Government)** presented Bill S-11, to amend the Canada Business Corporation Act and the Canada Cooperatives Act and to amend other Acts in consequence.

Bill read first time.

**The Hon. the Speaker:** When shall this bill be read the second time?

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

[*English*]

### CANADA-EUROPE PARLIAMENTARY ASSOCIATION

COUNCIL OF EUROPE PARLIAMENTARY ASSEMBLY MEETING FROM SEPTEMBER 25 TO 29, 2000— REPORT OF CANADIAN DELEGATION TABLED

**Hon. Lorna Milne:** Honourable senators, I have the honour to table, in both official languages, the report of the Canadian delegation of the Canada-Europe Parliamentary Association, which represented Canada at the Fourth Part of the 2000 Session of the Parliamentary Assembly of the Council of Europe, in Strasbourg, France, from September 25 to 29, 2000.

### UNITED STATES
### NATIONAL MISSILE DEFENCE SYSTEM

NOTICE OF MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT

**Hon. Douglas Roche:** Honourable senators, I give notice that two days hence, I will move:

> That the Senate of Canada recommends that the Government of Canada avoid involvement and support for the development of a National Missile Defence (NMD) System that would run counter to the legal obligations enshrined in the Anti-Ballistic Missile Treaty, which has been a cornerstone of strategic stability and an important foundation for international efforts on nuclear disarmament and non-proliferation for almost 30 years.

[*Translation*]

### SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

NOTICE OF INQUIRY

**Hon. Jean-Robert Gauthier**: Honourable senators, I give notice that on Thursday, February 15, 2001, I will call the attention of the Senate to current issues involving official languages in Ontario.

[*English*]

### EMPLOYMENT DISCRIMINATION

INFLUENCE OF COCA-COLA SETTLEMENT—NOTICE OF INQUIRY

**Hon. Donald H. Oliver:** Honourable senators, I give notice that on Thursday next, I will draw the attention of the Senate to the Coca-Cola settlement and the preceding lawsuit regarding racial bias in order to inform the Senate about recurrent issues concerning employment discrimination. I will also refer to the details of the settlement, analysis of the case, the reality of North America's corporate culture and the importance of the issue to Canada.

### CANADIAN BUSINESS AND GOVERNMENT BUREAUCRACY

NOTICE OF INQUIRY

**Hon. Donald H. Oliver:** Honourable senators, I give notice that on Thursday next, I will draw the attention of the Senate to the relationship of Canadian business and the Ottawa bureaucracy and how it was affected by the recent circulation of a memorandum by Peter Dey, the former chair of the Ontario Securities Commission and now Chairman of Morgan Stanley Canada. I will also draw honourable senators' attention to that relationship in relation to a recent publication by the Public Policy Forum dealing with the two solitudes.

### HISTORICAL IMPORTANCE OF PROCLAIMING FEBRUARY BLACK HISTORY MONTH

NOTICE OF INQUIRY

**Hon. Donald H. Oliver:** Honourable senators, I give notice that on Thursday next, I will draw the attention of the Senate to the historical importance to Canadians of February being proclaimed Black History Month.

### THE NATIONAL ANTHEM

NOTICE OF INQUIRY

**Hon. Vivienne Poy:** Honourable senators, I give notice that on February 8, 2001, I will call the attention to the Senate to the National Anthem.

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## QUESTION PERIOD

### ENVIRONMENT

SPEECH FROM THE THRONE—
MEASURES TO PROTECT CHILDREN'S HEALTH

**Hon. Mira Spivak:** Honourable senators, my question relates to the Speech from the Throne, but first let me congratulate the government on the many stated or implied environmental and health initiatives in the speech. There is a good deal in there on which I am sure we can all agree, but the devil, of course, is in the details. I was particularly interested in the statement that the government will strengthen laws and research efforts to develop appropriate standards for toxic substances and environmental contaminants that will reflect the special vulnerabilities of children. This was something many witnesses called for in our committee hearings on the Canadian Environmental Protection Act and something that we on this side supported, but the government at that time was not ready to accept it. It is also in keeping with the motion unanimously passed by this chamber some 15 months ago urging the government to establish an office of children's environmental health.

My question for the Leader of the Government in the Senate — and I wish to take this occasion to congratulate her again — is this: By what mechanism does the government intend to fulfil this pledge contained in the Speech from the Throne?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am sure that we were all delighted in the chamber to hear references made yet again in the Speech from the Throne — because it is not the only reference — to work that this institution has done and to recognize that work in terms of suggestions we have made in our study of legislation. However, I cannot answer the question of the honourable senator as to the nature of mechanism. I know that it is still in the planning stages, and I will obtain information for the honourable senator as soon as possible.

**Senator Spivak:** In obtaining that information, perhaps the Leader of the Government could answer my other questions. Will CEPA be revisited before the mandatory five-year period in this particular instance? Will an office of children's environmental health be established within a department or separate agency? Finally, how soon we can expect action on this issue?

• (1450)

**Senator Carstairs:** Honourable senators, I will add to my inquiry to the Minister of the Environment her questions as to when they expect to get the mechanism up and functioning; whether CEPA will, indeed, have a mandatory five-year review; and whether we will establish an office on children's health.

## AUDITOR GENERAL

EFFICACY OF APPOINTMENT PROCESS TO BOARDS OF CROWN CORPORATIONS—PROPOSAL TO DEVELOP SKILLS PROFILES—GOVERNMENT POLICY

**Hon. Donald H. Oliver:** Honourable senators, my question is directed to the Leader of the Government in the Senate. It has to do with Crown corporations.

Canada's Auditor General, Denis Desautels, has outlined several serious deficiencies in the way Crown corporations are governed. The weaknesses fall into three areas: weak boards of directors, ineffective audit committees, and the government's inability or unwillingness to challenge corporate plans before approving them.

With respect to the boards, the Auditor General makes several specific recommendations, including the development of a board skills profile before appointments are made, with selection to be based on that profile. Is it the intention of the Government of Canada to ensure that, in the future, Crown corporations submit board skills profiles to the appropriate minister, to the Privy Council Office and to the PMO? Will the government ensure that it acts upon these stated requirements in its selection of directors?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, in his report, the Auditor General has indicated his grave concerns with respect to appointed boards of directors of Crown corporations. However, it is important for all of us to remember that the most important principle must be good corporate governance, something which is essential for the operation of all Crown corporations. The government is determined to appoint qualified and competent persons; however, it will also respect the need for diversity, for geographic balance and, indeed, for gender and visible minority balance, all of which are necessary in the appointment process concerning Crown corporations.

The government has also made strides with regard to the time a director remains in office, which in itself can contribute to good governance. If there is too much turnover, then, clearly, the principles of good governance are not well established.

EFFICACY OF CROWN CORPORATION AUDIT COMMITTEES—GOVERNMENT POLICY

**Hon. Donald H. Oliver:** Honourable senators, I should now like to address the Auditor General's concerns about audit committees.

Honourable senators, in the private sector, the audit committee is the engine of a well-functioning board, yet the Auditor General has found that half of all Crown corporation audit committees are operating below an effective level. Two of the 14 audit committees examined did not have even a single member with any accounting or financial management experience. In other words, they could barely understand financial statements, and certainly would not ask probing questions about the corporation's financial risks and accounting.

Could the Leader of the Government in the Senate advise the Senate as to what specific steps the government will take to ensure that those who sit on Crown corporation audit committees are at least able to read the balance sheet and challenge the numbers that are laid before them?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, obviously, it is important that skilled people sit on boards of directors, whether on Crown corporations or private corporations. Clearly, a knowledge of how to read a balance sheet is an important skill. At one point in time in this country we thought that the only people who were appropriate for certain positions in life were lawyers. It now seems that the only people appropriate for certain positions in life are chartered accountants. I think we have to find a balance in all things.

## HUMAN RESOURCES DEVELOPMENT

EMPLOYMENT INSURANCE FUND—DISCLOSURE BY EMPLOYMENT INSURANCE COMMISSION OF CRITERIA IN DETERMINING PREMIUM RATES

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It has to do with the Employment Insurance Fund. I have asked this question every year for the last four years. I first asked the question when the surplus was around $8 billion. It is now $35 billion, and growing. That amounts to three years' worth of benefits.

Premiums are supposed to be set at a level that will cover the cost of the program while ensuring stable rates over a business cycle, yet the government continues to set premiums at levels that drive that surplus up further.

On at least two separate occasions the Auditor General has recommended that the government and the EI Commission disclose the way the EI legislation is interpreted when premiums are set. Could the minister advise us as to why no such disclosure was made when premiums were set for this year on December 31?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Auditor General has again raised the concern of the lack of clarity in the EI system. That is exactly why last December the government accepted the advice of the EI Commission to cut premiums for 2001 by $1.2 billion by lowering the premium rate by 15 cents. That is in addition to the $5.2 billion in savings to Canadians resulting from other reductions over the past six years.

At the time of tabling Bill C-44, the government committed itself to developing a new EI rate setting mechanism. That bill, under a different number, has now been introduced in the House of Commons. It will come to the Senate very soon. I hope that the Honourable Senator Stratton can provide a lively discussion in that committee debate.

**Senator Stratton:** Honourable senators, I should like the minister to clarify one point. She stated that the rates set in December were done so on a fair basis. The EI actuary has stated that to break even the program could run on premiums of $1.75. That amount would still look after all the requirements. However, the rate is $2.25. Can the minister explain the difference?

**Senator Carstairs:** Honourable senators, as the honourable senator knows, in the ultimate analysis of any situation, the government must decide what the final rate should be. I think the government is exercising caution in this regard, caution which is worthy of merit.

**Senator Stratton:** Honourable senators, if we have a surplus of $35 billion, why do we need a surcharge of 50 cents? There is a $35-billion surplus sitting there. Surely to goodness we could set the rate at $1.75, allowing the rates to drop considerably.

**Senator Carstairs:** Honourable senators, the rates have already dropped considerably. The government is monitoring this situation most carefully, which is exemplified by the number of reductions that have taken place over the last few years.

[*Translation*]

## HERITAGE

### AUDITOR GENERAL'S REPORT—EFFICACY OF ALLOCATION PROCESS FOR GRANTS

**Hon. Pierre Claude Nolin:** Honourable senators, last year the media had a field day with the administrative problems at the Department of Human Resources Development and later the Canadian International Development Agency.

Today, we learn from the Auditor General's report that it is the Department of Canadian Heritage's turn to have problems with its grant approval process. This is not the first time the Auditor General has made such a remark.

In 1998, the Auditor General of Canada had already warned Parliament about the serious shortcomings in the grant approval process within Heritage Canada's Multiculturalism Directorate. It is clear from the Auditor General's report that the situation has grown worse.

In fact, 19 per cent of the files examined in an internal audit did not meet Treasury Board's standards of due diligence. Furthermore, 37 per cent of applications for which grants were approved were considered barely acceptable. So, in 56 per cent of the cases examined in the internal audit, a grant was approved for reasons I would characterize as dubious.

Can the minister tell us why, in the space of two years, the situation has grown worse rather than better?

[*English*]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, there may be some dispute as to the facts set out in his particular question.

• (1500)

As the honourable senator indicated, when the Auditor General released his report in 1998, he pointed out some concerns to the Department of Canadian Heritage. Since that time, audits have become a standard practice in that department. Management has accepted and has already addressed most of the recommendations of the Auditor General's follow-up audit, which has taken place, and the department has clarified its strategic objective and has provided additional training for staff, strengthened control and assessment mechanisms and implemented an enhanced management framework. The Auditor General himself noted that the department has undertaken a number of initiatives to address the problems we found and to strengthen due diligence across the department.

[*Translation*]

### ROLE OF MINISTER WITH REGARD TO APPROVAL OF GRANTS

**Hon. Pierre Claude Nolin:** The Auditor General tells us that in 1998, 30 per cent of grants approved did not meet Treasury Board's due diligence requirements. Now, in 2001, 56 per cent of files fail to meet these requirements. I respect the figures given by the Auditor General. In spite of everything, the conclusion now reached is that all the department's efforts were in vain. Things have simply gotten worse. Could the minister tell me what role the Minister of Canadian Heritage plays in the grant approval process?

[*English*]

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator has asked: What is the role of the minister? Honourable senators, it is the role of the minister to ensure that due diligence is practised and that the auditing recommendations are fulfilled to the best of her ability. The Auditor General has noted that there have been a number of important initiatives to address the problems and to strengthen the due diligence across the department. For that, the minister should be congratulated.

[*Translation*]

**Senator Nolin:** My question is more specific than that. What is the role is the Minister of Canadian Heritage required to play in the granting process within the multiculturalism directorate?

[*English*]

**Senator Carstairs:** Ultimately, honourable senators, the minister is responsible for anything in her department.

**Senator Nolin:** She is signing off on a contribution. She has no authority to give away that money.

**Senator Carstairs:** Quite frankly, honourable senators, I do not know if the minister signs off on every single grant. However, I will get that information for the honourable senator. Ultimately, she is responsible.

## HEALTH

### NEW BRUNSWICK—FUNDING OF ABORTION SERVICES

**Hon. Lowell Murray:** Honourable senators, my question is for the Leader of the Government in the Senate. In the view of the federal government, which of the principles of the Canada Health Act does New Brunswick violate by its decision to fund only those abortions that are conducted in its public hospitals?

**Hon. Sharon Carstairs (Leader of the Government):** I wish to thank the honourable senator for his question regarding the issue of abortion services not only in the province of New Brunswick but also in the other provinces across this country.

Honourable senators, it is very clear that necessary medical services are to be paid for. That is part of the underlying principle of the Canada Health Act, and it is the part of the Health Act to which the reference should be made.

**Senator Murray:** Well, perhaps the leader could explain to me in what respect that principle, which would be the principle of public administration and funding, is violated by the decision of the Province of New Brunswick and also of Manitoba, as she notes implicitly, to regulate the performance of abortions in that way?

**Senator Carstairs:** The honourable senator should know that all insured physician services and hospital services should be provided at no cost to insured persons — that is, to almost every person living in this country — certainly all Canadian citizens — whether those services are provided in a hospital or in a clinic. The essence is: Is it an insured service?

**Senator Murray:** My friend says, "The essence is: Is it an insured service?" The five Canada Health Act principles are very clear. How can the government insist that the Province of New Brunswick or the Province of Manitoba, which have the right, as all provinces do, to regulate health services, are in violation of the Canada Health Act when the service is available in its public hospitals and is paid for as an insured service in that way?

While I am on my feet, I might ask the minister whether she would obtain a formal statement from her colleague the Minister of Health, as well as a copy of any written communication that surely would have been sent by Mr. Rock to the provinces in question.

**Senator Carstairs:** Honourable senators, I will answer the second part of the question first. Yes, I will undertake to find any formal statement or communication between the Honourable Minister of Health and the respective minister in the Province of New Brunswick.

I wish to remind the honourable senator that in September 2000 all first ministers agreed, in a document which they all signed, that they would uphold the principles of the Canada Health Act. Ensuring that an insured service is protected, whether it is provided in a clinic or in a hospital, is one of those commitments.

**Senator Murray:** While the minister is inquiring of the Minister of Health on that matter, perhaps she would return to the specific question I asked in the first place. The principles of the Canada Health Act are universality, accessibility, comprehensiveness, public administration and portability among the provinces. Which of those principles is being violated by either New Brunswick or Manitoba, or by any other province, in the case of abortions?

**Senator Carstairs:** Honourable senators, I would suggest that, perhaps, up to three of the principles are being violated, namely, universality, accessibility and, in cases involving women in Prince Edward Island, portability.

## AGRICULTURE

### ADEQUACY OF GOVERNMENT SUBSIDIES TO GRAIN FARMERS

**Hon. Leonard J. Gustafson:** Honourable senators, as everyone in this chamber knows, there has been a lot of talk about agriculture but little action, to the point where it is very serious. A professor who teaches at the University of Saskatoon and at the University in California was on CBC radio this morning saying that in this past year the subsidies in the U.S. have been historically higher than ever and will be higher next year than they are now — that is, approximately $25 billion. We keep getting the answer from our government, "We will try to get the Americans and the Europeans off subsidies." That will not happen.

My question is this: When will the government realize that this is a serious problem? The professor predicted that next year's farm income in the grain sector — not the dairy sector or some of the other sectors under the board — will be down considerably from what it is this year. Farms cannot survive in that situation. It is now to the point where the government must do something to save this industry in Canada. There was little mention of it in the Speech from the Throne, even after the farmers demonstrated here. There was no mention of it as the Prime Minister met with the President of the United States, and I guess that is to be understood. However, other things were mentioned.

The question farmers want to know is this: When will the government take this matter seriously and take some action and stop telling us that they "will get the Europeans and the Americans off subsidies?"

• (1510)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, this issue is clearly a concern not only to the government but to me in particular, as I do live in one of the provinces where oilseeds and the grains industry are important to the economy.

The reality is that if we try to play the subsidy game with the United States and the Europeans, we will simply never be able to match the amounts of money that they are prepared to pour into this particular sector. We must then look at alternative proposals. One of those alternatives is to negotiate the absence of subsidies from other countries, primarily the United States and the European nations.

In addition, we must continue to work on programs which will help our farmers now. The Agriculture Income Disaster Assistance program was one. The safety net programs are another. Such initiatives, particularly safety net programs, were announced in the Speech from the Throne, because it is important to help our farmers over the next few years as negotiations take place at the world trade level.

**Senator Gustafson:** Honourable senators, some believe that it is not the political arm of the government that is resisting this support, but rather the bureaucracy that has decided the kind of agriculture we will have in Canada, and no one is able to stand up to them. Does the Leader of the Government share in that opinion?

**Senator Carstairs:** Honourable senators, I have no idea whether the bureaucracy is holding up anything. I do know, however, that the federal-provincial safety net package worth $5.5 billion was announced last year. In addition, the Canadian Farm Income Program contributed another $2.1 billion. Canada is doing its part. It needs to do more. That is why a better safety net program is being examined and advanced. Hopefully, those efforts will meet the needs of our agricultural producers but, ultimately, we have to get rid of the subsidies which are paid in enormous amounts of money by the Americans and by the Europeans.

**Senator Gustafson:** Honourable senators, in my opinion, that will not happen. When will the government take some action on this situation? The AIDA program did not work. Ask any farmer in Saskatchewan, Alberta, Manitoba or Ontario, and they will tell you the program did not work. It was a joke.

When will the government take some serious action to benefit all of Canada, Ontario as well as Western Canada? This is becoming an alienating thing. This lack of action is actually alienating Western Canada, and that is a sad situation. The government has money for other things in the millions and billions of dollars. I will not name them. The leader knows what they are. Yet there is no real money for the farmers. If there is money, it has gone to the bureaucracy in administration costs.

**Senator Carstairs:** Honourable senators, I certainly do not agree with the proposition set forth by the honourable senator. For example, he says that the AIDA program has not worked. AIDA has provided $154 million in cheques to farmers. That is $154 million that farmers would not have had if AIDA had not been in existence, so it is not possible to say the program is not working. Yes, it had administrative difficulties. That is clear. Many of those administrative difficulties were corrected, and the response rate for AIDA program has increased dramatically. To say that $154 million paid out by the federal Department of Agriculture has not worked is simply not true.

[*Translation*]

## OFFICIAL LANGUAGES

### SPEECH FROM THE THRONE— SUSTAINING OFFICIAL LANGUAGE MINORITY COMMUNITIES

**Hon. Gerald J. Comeau:** My question is further to the one raised last week by Senator Nolin with regard to the word "viable" which appears in the French version of the Speech from the Throne in connection with the commitment to protect francophone minority communities in Canada and to promote their growth.

In her answer, the minister stated that francophone minority communities should view the word "viable" in a much larger context. This does not answer Senator Nolin's question. Could the Leader of the Government in the Senate look up the definition of the word "viable"?

Will this new concept be used to assess minority communities on the verge of disappearing or being assimilated, especially smaller communities such as those in Nova Scotia, Prince Edward Island, Newfoundland and others? The word "viable" did not just happen in a document of this kind. It was carefully chosen and probably indicates a policy shift on the part of the government.

[*English*]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as per my undertaking to Senator Nolin, I requested the semantic definitions of the two words in question as used in the Speech from the Throne. I will be pleased to share any reply received with Senator Comeau.

We must also bear in mind that this government is committed to helping the official language communities to thrive. We want both francophone and anglophone communities across the country to develop and to flourish. Our linguistic duality must be recognized as a genuine asset in this country for each and every Canadian.

[*Translation*]

**Senator Comeau:** Could the leader of the government also look at the definition of the criteria and factors which will be taken into account to determine which of these communities are "viable, or sustainable"?

[*English*]

**Senator Carstairs:** I thank the honourable senator for that question, and I would be pleased to add it to the question that has already gone forward.

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[*Translation*]

# ORDERS OF THE DAY

## MOTOR VEHICLE TRANSPORT ACT, 1987

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

**Hon. Marie-P. Poulin** moved the second reading of Bill S-3, to amend the Motor Vehicle Transport Act, 1987, and to make consequential amendments to other acts.

She said: Honourable senators, I am pleased to introduce the amendments to the 1987 Motor Vehicle Transport Act. This bill applies to an industry that is the cornerstone of Canada's and North America's economy. It involves cooperation between the federal government and the provinces. It concerns road safety, more importantly.

Honourable senators, permit me to say a few words about the Motor Vehicle Transport Act in its present form.

The act governs many truck and bus transportation businesses that come under federal jurisdiction. These are motor carrier undertakings that operate beyond the borders of a single province and are known as extra-provincial carriers.

The federal government is responsible for regulating the safety of their operations. The provincial governments are, under the Constitution, responsible for carriers operating solely within their province. They are also responsible for issuing drivers' licenses, registering vehicles and applying traffic regulations.

• (1520)

Aware of the important role of the provinces in road transportation, the federal government has traditionally delegated its responsibilities to them so there may be only one regulatory level for all Canadian motor carriers.

The Motor Vehicle Transport Act empowers the provincial and territorial governments to regulate federal carriers.

Legislation is vital to shared responsibility for the national regulation of motor carriers. In addition, it is very important because of the strategic direction it gives to the national regulatory framework.

As the senator for Sudbury representing a region in Northern Ontario, I should like to take a few minutes to detail the importance of the trucking industry in Canada.

Its importance to Canada's economy cannot be overestimated. Almost all the goods we use are transported by truck. It is the primary means of getting fresh fruits and vegetables to our local supermarket, of delivering raw materials and parts to manufacturers and assembly plants, and of distributing finished products to market.

In Canada, trucking generates revenues from merchandise in excess of $40 billion annually.

Trucking represents over 84 per cent of all revenues attributable to the surface transportation of goods, and approximately three-quarters of trucking activities are carried out by extra-provincial motor carriers.

The trucking industry is extremely diversified. It consists of large multinationals, small and medium-sized businesses and a great many individuals who use their own trucks. There are over 700,000 heavy vehicles and almost 250,000 operators of fleets in Canada.

Clearly, regulating this vital industry could have a major impact on the Canadian economy. The well-being of Canadians is directly proportional to the effectiveness of the trucking industry.

The Canadian bus transportation industry is not as large, but it too meets an essential need. Buses, including charters, generate revenues of half a billion dollars annually and are responsible for one-third of the intercity transportation of travellers not attributable to private passenger vehicles.

It is in everyone's interest for buses to continue to be able to offer Canadians an economical and safe means of transportation.

Honourable senators, let us look at the importance of safety, for the safety of motor vehicle transportation is at the very heart of the bill being introduced today. Trucking has increased rapidly with the growth in economic activity. Since 1991, the number of kilometre-tonnes of goods within Canada has increased by more than 60 per cent and the number of kilometre-tonnes at the border between Canada and the United States is now three times what it was in 1991.

Honourable senators, this remarkable increase did not result in a higher number of accidents involving heavy vehicles. In fact, the accident rate involving such vehicles has gone down. Moreover, motor coaches have an impressive record of passenger safety. Some years, there is not a single fatality among passengers in motor coaches.

However, sometimes a tragic accident affecting a large number of people does occur. Also, any collision involving a school bus raises serious concerns. Unfortunately, every year, there are still over 54,000 accidents involving commercial vehicles. Over 500 people lose their lives in these accidents, while an additional 11,000 suffer serious injuries. Honourable senators, the cost of these accidents to society is so high that the safety of trucks and motor coaches must remain a priority for all governments.

Some of the successful initiatives regarding commercial truckers are related to the detailed safety standards governing the vehicles themselves. The Canada Motor Vehicle Safety Act, which is administered by Transport Canada, prescribes the safety standards applying to new trucks and motor coaches. Recent improvements to these standards include anti-lock brake systems, self-adjusting brake mechanisms and reflecting bands to improve visibility.

Honourable senators, you can rest assured that, thanks to these standards, the new heavy vehicles that travel our highways are equipped with major new technological features to improve safety.

[*English*]

Honourable senators, as I indicated earlier, each province has laws and regulations governing the operation of commercial vehicles. These provincial safety regimes are patterned after the National Safety Code for Motor Carriers. There are 15 National Safety Code standards covering all aspects of safe commercial vehicle operation. The standards address the driver, the vehicle and motor carrier management.

Over the past few years, the federal, provincial and territorial governments, in consultation with industry and public interest groups, have made a major effort to develop an umbrella standard based on real on-road safety performance. This effort recently culminated in the new National Safety Code Standard 14 safety rating. This standard provides a framework for provincial governments to rate motor carriers based on their actual on-road safety performance.

Based on this knowledge, governments are able to take appropriate enforcement action, carriers know where they stand relative to the industry, and shippers are able to choose a carrier in an informed way. All parties will have important, real-world information on motor carrier safety. At the same time, primary responsibility for safe operation remains clearly where it should be, on the motor carrier itself.

Fully implemented, the safety rating regime means that records of collisions, traffic offences and violations of safety standards will be collected for each motor carrier from wherever that motor carrier operates. The jurisdiction in which a safety incident occurs will transmit information to the province where the carrier is registered. Based on a compilation of all these records, the home jurisdiction creates a safety rating for each motor carrier. The amendment being discussed today will enable each provincial government to apply the new safety rating standard to federally regulated motor carriers. Clearly, for a national and international program such as this, it is important that carriers be rated in a similar fashion in every jurisdiction.

The bill establishes a framework for consistent safety rating. Based on this safety rating, provinces will issue a safety fitness certificate. This is a carrier's permission to operate anywhere in Canada.

• (1530)

The bill provides for and Transport Canada is working towards agreement with the United States and Mexico such that safe motor carriers can look forward to seamless treatment from safety regulators across North America.

Honourable senators, permit me to close on the issue of partnerships and cooperation: partnerships between governments and cooperation with stakeholders. The National Safety Code for Motor Carriers is a product of a federal-provincial-territorial memorandum of understanding signed in 1987. National Safety Code standards are developed and maintained by federal-provincial committees that also include industry, labour and public interest groups. The bill before us today reflects progress made through the consensus process toward advanced and consistent national safety recognition. This bill establishes a framework for a national program administered by provincial governments in a consistent manner toward all motor carriers. I believe that this cooperative arrangement is the best way to achieve the highest feasible level of safety for commercial vehicle operation throughout Canada.

In conclusion, honourable senators, the bill to amend the Motor Vehicle Transport Act, 1987, is the product of such consultation and consensus and is founded on partnerships. The amended act will apply motor carrier regulation based on real on-road safety performance. Moreover, passage of this bill will provide an important impetus for a continuing cooperative process between governments, industry and public interest groups, building on work already accomplished to improve the safety on our roads.

On motion of Senator Spivak, debate adjourned.

## BLUE WATER BRIDGE AUTHORITY ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Lorna Milne** moved the second reading of Bill S-5, to amend the Blue Water Bridge Authority Act.

She said: Honourable senators, I am pleased to speak at the second reading of the proposed legislation to amend the Blue Water Bridge Authority Act.

Many of us are probably unaware that the Canada-U.S. international crossing between Port Edward-Sarnia, Ontario, and Port Huron, Michigan, has a history of 300 years as a transportation centre and area of strategic importance.

First Nations, French, British, American and Canadian settlements adjacent to the head of the St. Clair River led to the need, over the years, to locate forts, roads, railways and highways in the area. The growth of travel and commerce in that area eventually necessitated the building of tunnels, ferries and bridges across the St. Clair River. Construction of the Blue Water Bridge began on June 14, 1937, and it was opened to the public the following year on October 10, 1938.

Over 50 years later, in 1992, an international task force studying the Blue Water Bridge crossing concluded that the existing bridge was operating in excess of its design capacity and that a second bridge should be built. Planning and environmental assessment work was initiated in the summer of 1993. Construction began in the spring of 1995, and two years later a second Blue Water span was opened to traffic on July 22, 1997. Once the new bridge was opened, the original 60 year-old bridge was temporarily closed for much-needed rehabilitation.

The Blue Water Bridge links Canada's national highway system with the U.S. interstate system. In particular, it joins Ontario Highway 402 to Interstates 69 and 94 on the American side, and it is the quickest, most direct route from Montreal or Toronto to Chicago and the American Midwest.

Honourable senators, the Blue Water Bridge is the second largest Canada-U.S. gateway in terms of exports and the second busiest crossing for trucks. An average of 14,000 vehicles per day cross the Blue Water Bridge, and on a busy day as many as 20,000 vehicles, including well over 6,000 trucks, may cross this international bridge.

The Blue Water Bridge is Canada's fastest-growing crossing, with traffic increases of about 8 per cent per year. The bridge is primarily a long-distance crossing. I am told that about 2,500 to 3,000 trucks per month from the province of Quebec cross this bridge, heading to the United States. Obviously, this bridge is important to many of our provinces, not just Ontario.

The Blue Water Bridge Authority has owned and operated the Canadian half of this bridge since the early 1960s. The authority was created by the federal government by An Act respecting the International Bridge over the St. Clair River known as the Blue Water Bridge. This act was assented to on May 21, 1964.

Honourable senators, the purpose of this amendment to the Blue Water Bridge Act of 1964 is to update the ability of the Blue Water Bridge Authority to borrow funds. The current act limits the power of the authority to borrow funds unless the bond interest rate is less than or equal to 6.5 per cent. Not only is this restriction not in keeping with current practice, but at present it is impossible. Other international bridges have an established maximum borrowing limit.

This amendment proposes a maximum borrowing limit of $125 million, which will be adequate to handle the authority's long-term debt, currently totalling about $60 million, and their multi-year capital plan, totalling an additional $55 million.

[ Senator Milne ]

Honourable senators, the Blue Water Bridge Authority is continually looking for ways to improve their operation and to make their crossing as efficient and as safe as possible. Their capital plan identifies major modifications to the terminal layout to improve the flow of traffic and to address safety concerns identified by independent consultants. Without the passage of this legislation, the authority will be unable to borrow the necessary funds to make these improvements.

The Blue Water Bridge Authority is a public body basically independent of the Crown. It operates at arm's length. It is not an agent or employee of the Crown, and the Crown is therefore not liable for its debts. It receives no federal funding.

This proposed legislation to amend the Blue Water Bridge Authority Act is important for Canada's economic viability and competitiveness. With Canada-U.S. trade growing at an average annual pace of more than 10 per cent, we cannot afford to ignore the crucial economic role our international border crossings play in facilitating the movement of this trade.

Honourable senators, I hope you will all join with me in giving expeditious consideration to this important initiative. The Blue Water Bridge Authority needs this legislation in order to continue to operate and maintain this important transportation link efficiently and to make capital improvements in the most cost-effective manner possible.

On motion of Senator Kinsella, debate adjourned.

• (1540)

## BROADCASTING ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Sheila Finestone** moved the second reading of Bill S-7, to amend the Broadcasting Act.—(*Honourable Senator Finestone, P.C.*).

She said: Honourable senators, the purpose of Bill S-7 is to amend the Broadcasting Act. Bill S-7 proceeded through second reading stage and was referred to the appropriate standing committee of the Senate for study. However, the bill died on the Order Paper with the calling of the national general election.

The summary of Bill S-7 states:

> This enactment amends the *Broadcasting Act* in order to enable the Canadian Radio-television and Telecommunications Commission to make regulations establishing criteria for the awarding of costs, and to give the Commission the power to award and tax costs between the parties that appear before it.

Within the context of this bill, I bring the full attention of honourable senators to one significant area that requires further elaboration and is the basis for the amendment which I am advancing. Consider the following, honourable senators.

[*Translation*]

We know that under sections 56 and 57 of the Telecommunications Act, the Canadian Radio-Television and Telecommunications Commission, or CRTC, has the power to compensate the organizations or individuals appearing before it during proceedings on telecommunications. The act also authorizes the CRTC to establish the refund criteria and to determine to whom costs will be repaid and by whom.

[*English*]

Conversely, the Broadcasting Act does not envision such provisions. Consequently, the CRTC has no power to either award costs or establish the criteria of awards under such an act. This is an imbalance that causes concern and requires immediate rectification.

[*Translation*]

Honourable senators, why is it essential to amend the Broadcasting Act?

[*English*]

First, this amendment brings the Broadcasting Act into concordance with the Telecommunications Act where the rights for cost recovery have existed for years.

Second, this amendment will be extremely beneficial to the Canadian public. Cost awards will allow consumers and public interest groups, as well as individuals, to develop thorough research and substantial evidence to represent effectively the interests of citizens in broadcasting and cable television policy and regulatory proceedings.

Third, convergence and the information highway have created a deep interplay between telecommunications and the broadcasting services used by the public, such as new media and the Internet. Often, the CRTC has been faced with issues involving both the Telecommunications Act and the Broadcasting Act. Regardless of the validity of the arguments presented, the CRTC has been able to award only those costs covered under the Telecommunications Act, but not under the Broadcasting Act even though the information provided under both acts has proven pertinent and value-added.

Fourth, the vastness of the funding available to media companies is in outright contrast to the financial limitations faced by consumers and their representative groups. This condition therefore creates imbalances and inequalities that are inconsistent with our democratic system. Substantive and effective participation by consumer organizations representing the interests of citizens is often hampered by financial limitations owing to the fact that detailed research studies and expert assistance are very costly.

Fifth, this much needed amendment brings into symmetry and balances both acts. Thus, consumers will be fairly and equally treated in all proceedings before the commission, whether conducted under the Broadcasting Act or the Telecommunications Act.

[*Translation*]

Sixth, consumer groups across Canada strongly support this initiative, since they are aware of the importance of equal representation under the Broadcasting Act. Among the organizations supporting the proposed amendment are the British Columbia Public Interest Center, the Public Interest Law Center, the National Anti-Poverty Organization, the Canadian Labour Congress, Action Réseau Consommateur, the Canadian Library Association, the Manitoba chapter of the Consumers' Association of Canada, the Communication Workers Union, Rural Dignity of Canada, the Association coopérative d'économie familiale, and the Public Interest Advocacy Centre.

[*English*]

Seventh, other regulatory agencies in Canada provide for the payment of intervenor costs. Many tribunals that regulate public utilities or important public services award costs of public interest intervenors to reimburse them for their intervention.

I want to thank our honourable Speaker for the fact that when he was Deputy Leader of the Government in this place, I was allowed to research this matter further.

In addition to the CRTC, funding is available for consumer groups participating in hearings on electrical and natural gas proceedings in many provinces in Canada, such as British Columbia, Alberta, Manitoba, Ontario and Quebec. At the federal level, the Canadian Transportation Agency is another example of a tribunal with the power to award costs. To give honourable senators an example, the Régie de l'énergie in Quebec may rule that electric power or natural gas distributors pay all or part of the expenses of intervenors whose participation the Régie considers useful.

The British Columbia Utilities Commission applies award criteria similar to those used by the CRTC for telecommunications, such as the intervenor's contribution to a better understanding of the issues, interest in the issues under discussion and the effect that the commission's decision will have on the people the intervenor is representing.

Eighth, the issues examined by the commission could have a wider repercussion on the population in general. For example, national issues, such as television policy or cable television distribution regulations, or more specific issues, such as the rate consumers pay for cable television services, could be potentially at stake.

Again, I must point out, honourable senators, that the high level of citizens' participation in telecommunications matters cannot be compared to the level of citizens' participation in broadcasting proceedings, for one reason. Simply stated, they have not been able to secure their participation because of financial restraints.

The issue of effective citizen participation has become even more relevant since this bill was first introduced last summer. Over the past few months, the CRTC has instituted a number of proceedings relating to convergence, pricing, service and industry consolidation, which are of great interest and relevance to consumers.

For example, CRTC Public Notice 2000-113 deals with the impending shift from analogue to digital broadcasting. I pulled that switch for digital broadcasting to start in Canada. Little did I know it would have this kind of impact.

Who will bear the costs and how will consumer choices be affected in view of the enormous expenses involved in this technological change?

As another example, CRTC Public Notice 2000-165 deals with policy revisions for companies owning certain types of programming services. What are the implications of consolidation, vertical and horizontal integration for citizens in terms of pricing, choice of service, diversity of expression and competition?

Honourable senators, in our changing communications sector, Canadians deserve answers to these questions. We know how industries' and consumers' points of view differ and how issues of this magnitude need to be treated in a fair and balanced way for the benefit of all.

• (1550)

Without the ability to recover costs related to the gathering of substantial evidence, consumer participation is limited. While consumers and consumer groups may be able to present short briefs expressing general principles and expectations, they are not able to afford in-depth research and testimony. Their meagre efforts crumble under the weight of evidence put forward by the industry.

I should like to underscore the wording that is used for the proposed amendment on broadcasting, for it is exactly the same as that used in the Telecommunications Act. As a point of information, however, I clarify that the use of the term "taxation" is proper in the context of the amendment and does not relate to the fiscal or money-raising powers and authority of the government. As unfortunate a choice of words this may be to you and me, "taxation" is the proper legal term used by the courts in regulatory agencies such as the CRTC.

Who will be funded? Not everyone who appears before the CRTC in a proceeding will automatically qualify for a cost award. With the passage of this amendment, the CRTC will draw the rules of procedure that will be used to determine the criteria for awarding costs under the Broadcasting Act. As with the criteria that already exists in telecommunications rules of procedure for costs, applicants must demonstrate to the commission that they are representative of a group of citizens, that they have participated in the proceedings in a responsible way, and that they have contributed substantially to a better understanding of the issues in question. These are rigorous tests.

Who pays the costs for these awards?

[ Senator Finestone ]

[*Translation*]

The costs are met by companies that come under the jurisdiction of the CRTC who took part in the proceedings and will be affected by the outcome. One of the principles of reimbursement is to compensate deserving intervenors for the costs incurred by an intervention, based on the fair market value of the work performed. Like the costs for company representation, the funds come from the key industry intervenors' services budget.

[*English*]

I would say to you, honourable senators, it is the cost of doing business.

The CRTC has always followed this practice in telecommunications, and this practice was confirmed as appropriate by the Supreme Court of Canada in 1986.

Honourable senators, in broadcasting in 1997 and 1998, the CRTC processed — and I found these figures astonishing — 1,379 applications relating to television, radio, broadcasting distribution undertakings, pay and specialty television undertakings. These included requests for new licences, licence amendments and renewals, applications to transfer ownership control and cable rate filings. The commission also issued 658 broadcasting decisions and 143 public notices. Cost awards were not available for any of these proceedings to community interest groups.

On the other hand, in telecommunications in 1997-98, the CRTC processed 2,123 telecommunications-related applications and issued a total of 1,912 telecom decisions, orders, public notices, cost orders and taxation notices. Consumer groups do not participate in every proceeding, just those most relevant to their interests. In 1997, at the height of the CRTC proceedings reregulating the telephone sector, there were eight cost awards, usually involving coalitions of consumer groups, amounting to some $752,880.

Honourable senators, I understand that this figure may sound high; however, compared to over $20 billion per year in revenue by the industry, I would suggest to you that $700,000 becomes a fairly insignificant amount.

Since 1997, with the major regulatory work necessary to reshape the industry coming to completion, we have seen the volume of proceedings and amount of costs decline. In 1998, the CRTC made 16 cost awards, amounting to $552,683.16; in 1999, four cost awards were made, amounting to $155,635.12. With the exception of those years featuring major regulatory or policy proceedings, the cost of awards in the future is expected to tend toward these lower amounts.

Furthermore, in exercising its responsibility under the Broadcasting Act, the CRTC is given decision-making powers that are important for and have a great impact on Canadians associated with the promotion of Canadian culture, the setting of rates, the introduction of competition, and the resolution of stakeholder disputes.

Under section 3(*d*)(i) of the Broadcasting Act, the commission is instructed to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada. Therefore, for the process of decision-making to be congruent with our Canadian principles of fairness and equity, it is vital that the process be conducted on the basis of openness, impartiality and transparency. This amendment, therefore, affords us the opportunity to translate these normative principles into functional ones so that the goods of wise governance may be delivered effectively in these important regulatory hearings.

[*Translation*]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to say a few words about the bill introduced by Senator Finestone. I have in front of me two versions of the text of the bill, one long and one short, and I can tell from the expressions on the faces of my colleagues over there that they are unanimously in agreement for me to choose the short one.

[*English*]

I had the honour to support this bill in the last Parliament, and I have not changed my position on it. In fact, I think that this house should continue its examination in committee on this, because it is an important initiative.

Briefly, a number of elements in the bill have attracted my support. First, through this amendment to the Broadcasting Act the Canadian public will have more equitable representation and participation in regulatory and policy matters relating to the broadcasting and cable and television industry in our country. That is a principle that I embrace, and it is an important principle underlying this bill. A second attractive feature of the bill, in my eyes, is that this change would be of benefit to the CRTC by improving the quality of evidence it receives and considers as part of the commission's policy and regulatory decision-making process. Third, this amendment is fair and will not burden the broadcasting industry itself.

It seems to me, honourable senators, that the bill is supportive of an important principle of public policy, namely, that citizens participate in and be represented at policy, regulatory and other decision-making activities of the government and government agencies and be able to do so in an effective way.

• (1600)

It seems to me also that the bill and the amendments that it seeks to bring about will not diminish the ability of Canadians to express their general views about matters relating to the broadcasting sector to the CRTC through the means that are often used already, letters, e-mails and such. This level of participation will indeed continue. Nor will this change mean that CRTC proceedings will become too legalistic, thereby beyond the reach of individual Canadians.

To the contrary, the changes in communications to which I have just alluded mean that, in order to have opportunities to truly participate on a fair and equitable basis and to be effective while doing so, citizens and interest groups representing larger communities need the resources to develop substantive evidence and substantive submissions to complement and enhance general submissions and comments.

One does not have to be the proverbial rocket scientist to know that the industry sector has significant means available to it to prepare and present its briefs. Communities of Canadians do not have the same kind of resources, and the means that are being provided for here will level the playing field significantly. The amendment seeks to create the means to ensure that sufficient resources are available, when warranted, to facilitate this level of participation and representation by ordinary groups of Canadian citizens. The result will be that the interests of Canadian consumers will be better balanced with those of the giant media companies in decisions taken by the regulatory agency, the CRTC.

The change to the Broadcasting Act will also benefit the CRTC itself. Why? Quite simply, it will be able to make good decisions that balance the interests and needs of the public with the interests and needs of industry. The commission needs to have, as one can understand, quality research and evidence presented during its regulatory proceedings. The increased complexity of the communications industry, networks and services requires companies and public participants to have a comparable increased level of expertise and to provide more detailed information in their respective submissions, whether legal, economic, socio-cultural or any other type of research or analysis that would make the decision-making process that much more thoughtful. Improving the abilities of citizens and citizens' groups to formulate their views will improve the quality of evidence before the regulatory agency and improve the commission's ability to render fair and balanced decisions and to more effectively manage communication activities through policy regulations.

Finally, honourable senators, it struck me that the amendment the bill proposes to the act is fair, for it does not create a burden for the broadcasters or other communication companies. The bill adopts the same long-established model for facilitating greater and more effective public participation through the awarding of costs to intervenors, which has worked with great success under the Telecommunications Act. Cost awards have not been a burden to the industry nor to those broadcasters who have participated in telecommunication proceedings. Similarly, I do not believe costs awarded in the future under the Broadcast Act will be a burden for broadcasting or cable companies. Considering the value of awards, as has been the case with telecommunications, those costs are likely to be very small when compared to the revenues or the other expenses in the given industry. The substantive participation by public interest groups in telecommunications proceedings facilitated by intervenor cost awards has worked. It has helped to create regulatory decisions that are equitable for a large number of interests.

My reading of Senator Finestone's Bill S-7 leads me to conclude that regulatory proceedings conducted under the Broadcasting Act will lead to greater fairness and a higher quality of evidence and data before the decision-making body. It is for these reasons I support the principles of this bill and recommend its adoption at second reading.

On motion of Senator Gauthier, debate adjourned.

## BILL TO MAINTAIN THE PRINCIPLES RELATING TO THE ROLE OF THE SENATE AS ESTABLISHED BY THE CONSTITUTION OF CANADA

SECOND READING—DEBATE ADJOURNED

**Hon. Serge Joyal** moved the second reading of Bill S-8, to maintain the principles relating to the role of the Senate as established by the Constitution of Canada.—(*Honourable Senator Joyal, P.C.*).

He said: Honourable senators, the bill that I have the honour to place before you today for debate at second reading is without precedent in our history. Basically, it has two objectives. The first one is to raise awareness of the many instances, especially in recent years, when legislation passed in good faith by Parliament neglected to recognize that the Senate has a role and a status equal to that of the House of Commons. The second one is to remedy this omission by amending these acts so that they recognize the Senate's full status in the Canadian legislative process.

Let us begin with a review of the scale of the problem. Is this just a matter of a few isolated cases or is it, rather, a recurring practice involving a significant number of examples? A review of the statutes has identified 47 acts passed since 1920 that fail to give the Senate a role and status equal to the one of the House of Commons. Of these 47 acts, 20 of them have been inoperative with respect to the provisions of interest to us as senators. This leaves 27 acts that exclude the Senate and prevent it from carrying out its legitimate responsibilities. More important, since the 35th Parliament — that is, in the last seven years, since 1994 — eight bills have been introduced with that kind of clause excluding the Senate. Five were amended in the Senate and the House of Commons, and one was the object of a commitment by the government that the corrective amendment would occur in due course. The proposed bank act died with the end of 36th Parliament and Bill C-20 was adopted without amendment. Bill S-8 aims to amend the 27 acts still in effect that suggest a difference in status between the two Houses of Parliament.

[*Translation*]

The act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec secession reference, passed June 30, 2000, is not covered by this bill. Given its exceptional objective — that of empowering the Canadian government to undertake negotiations leading to the dismemberment of the country—it should be the subject of special consideration at the appropriate time. Bill S-8 is therefore an omnibus bill, designed to re-establish the role of the Senate of Canada in 27 acts passed by the Parliament of Canada.

We see no reason to try to determine what Parliament's intentions were when these provisions excluding the Senate were passed. The reasons no doubt varied widely, ranging from simple omission to a conviction that the Senate had no stake in the matter at issue.

[*English*]

Whatever the identified or acknowledged motive, the result is the same: The Senate is deprived of its fundamental role in our bicameral system. What, exactly, is that role? We must go back to the origins of our institution settlement to understand the core of the principles involved. It was obvious from the start of the discussion leading to Confederation that the Canadian Parliament would be bicameral like that of the United Kingdom, which is made up of two chambers or houses acting under the constitutional authority of the sovereign. This fact is evident among other sources in the preamble to our Constitution, which stipulates a Constitution similar in principle to that of the United Kingdom. King, lords and Commons — these are the three distinct components combined that embody the country's sovereignty with each being essential to the full expression of the people. All three are essential parties to any legislation.

• (1610)

Section 91 of the Constitution provides for this:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and Good Government of Canada...

It follows that the agreement and consent of both Houses are equally required. This is the law, and neither House can avoid, omit or delegate to the other the exercise of its duties. The Canadian courts have confirmed this on a number of occasions, most notably when they were required to rule on the scope of referendums on legislatures in 1919. Moreover, former Supreme Court Justice Mr. Willard Estey, testifying before the Standing Senate Committee on Aboriginal Peoples, on March 23, 2000, explained it forcefully:

> You have a duty. The Senate has a senior duty to perform. It has to perfect the process of legislation. That duty must clearly entail, on occasion, an amendment or a refusal or an automatic approval. All three are within your power. Not only are they within your power, they are within your duty. You have to scrutinize this thing and see what is good and bad and purify it. That is why you are here. The second house invariably, around the world, is set up as a brake on the first level of legislation, while the executive branch tags along all the way up the ladder.

There we have the heart of the question: Is it proper for the Senate to pass legislation that will allow it to evade its role of reviewing laws passed by the Commons and to avoid acting as the chamber that reviews executive decisions in the system of responsible government equivalent to that of the United Kingdom in 1867? I do not think so. The Senate has a fundamental, compelling part to play in the governmental process, and it has a constitutional duty to do so. It cannot escape its responsibility. If legislation were to be passed without Senate consent and approval, the actions under the bill would be found constitutionally unenforceable, that is, illegal, by the courts.

There is intrinsic reason that obliges the Senate to live up to that responsibility. The sovereignty and will of the Canadian people are expressed through the nation's Parliament. It is essential that both Houses of Parliament give their consent before legislation can be properly sanctioned by the Crown. This requirement is fundamental. It is woven into our country's very nature as a federation.

When the founders of Confederation had to decide on the type of union they were going to form, they opted for a federal union contrary to Sir John A. Macdonald's initial proposal for a unitary government. Canada's linguistic, religious, economic and regional diversity were too rooted for any realistic prospect of submerging them in a single assembly where Ontario would dominate. A federal structure was the only approach to any enduring union.

There is more. In that federal union, it was unthinkable to leave a simple elected House where Ontario would have effective control as the sole expression of the will of all the provinces. "Rep by pop" automatically gave the last word to the majority represented by the province with the largest population.

That was why the founders opted for a second house representing the regions and giving it equal weight to counterbalance the electoral rule that inevitably meant the dictatorship of the majority. Without a Senate, where the regions' linguistic and religious minorities were protected, there simply would not have been one dominion.

What conclusion should we draw from this essential characteristic of our Parliament?

[*Translation*]

The Senate, by its very vocation, is the expression and guardian of the interests and voice of regions and minorities. The Supreme Court has recognized this on three separate occasions in the past 20 years. It is a truth that is crucial to our country's constitutional reality. So it is the will of both Houses in our parliamentary system that guarantees democracy for all citizens.

[*English*]

When both majorities, that in the Commons and that in the Senate, join together, they voice our federation's democratic consent. This is how the sovereignty and the will of the Canadian people are expressed through our parliamentary system.

What does this mean in practise when it comes to drawing up legislation and to the democratic supervision which Parliament must exercise over the government? The conclusion is almost self-evident. The Senate's contribution is essential to the expression of the weighted will of all Canadians, whether they live in the most populous provinces or the most sparsely populated regions or territory.

Consequently, when a minister of the Crown makes a commitment to seek only the opinion of the House of Commons, for instance, on a report, as is often the case in the acts covered by omnibus Bill S-8, consideration of its conclusions will be determined by the elected majority concentrated in the provinces with the most people. The minister thus violates the federal principle enshrined in our Parliament. We have a duty to review on an equal footing the same laws and submissions that are submitted to the House of Commons. This is vital if Canadians living in the regions or belonging to minorities are to preserve a voice in the decisions to be made and the directions Canada is to take.

We cannot abdicate this role. It is our duty to carry it out by approving, amending or rejecting any submission placed before this Senate. That is the objective of this omnibus bill. It re-establishes our role in 27 specific cases where the voice of the Senate, that is, the voice of regions and minorities, has been excluded.

The bill has another objective as well — to make the government aware that it cannot ignore the Senate with impunity. The point is not that a few self-important senators want a chance to sound off about everything. The point is that the very nature of our country is based on respect and equality for all, even in the most remote regions.

Our regime is weighted, balanced and fair. The dictatorship of the majority or the will of a single house has never been our way. We have always sought to protect minorities and those whom geography or history has made less influential. Is this not in fact a conception of freedom that sets a very high standard of equality and respect for all? Is this not at the heart of what makes up our Canadian identity and infuses our approach to the institutions of national government?

If we allow this habit of excluding the Senate to persist and these precedents to proliferate, we are endorsing the view that the Senate has no useful role. We are allowing to hang over us a fog of futility that a number of people would like to invoke as justification for imputing the power of this institution or simply abolishing it.

Honourable senators, experience teaches us that sometimes we must be put to the test. That is, we must find ourselves deprived of some physical or material advantage to realize what really matters in the choices we make.

• (1620)

Perhaps the repeated clauses excluding the Senate will make us more aware of our duties and responsibilities and, I hope, convince all honourable senators to support this bill, which has no other aim than to ensure that all Canadians have an equal voice in the government of their country as stipulated by our Constitution.

On motion of Senator Beaudoin, debate adjourned.

## PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Jerahmiel S. Grafstein** moved the second reading of Bill S-10, to amend the Parliament of Canada Act (Parliamentary Poet Laureate).—(*Honourable Senator Grafstein*).

He said: Honourable senators, this is the second time this millennium I have introduced the second reading of a bill to establish a parliamentary poet laureate. I first introduced this bill on November 2, 1999, as a modest millennium project. You will recall that the bill finally passed third reading on June 28, 2000, after a thorough review by the Social Affairs Committee. It was unanimously reported by the committee and subsequently approved at third reading.

The bill was then sent to the other place in the dying days of the last Parliament where it languished on the Order Paper for lack of time. It is to be hoped that the bill will receive speedy passage in the Senate and will then be able to wend its way through the obstacles of the other place.

Honourable senators, let me remark upon the simple contours of this proposed legislation. Biannually, the heads of five of Canada's major cultural institutions — the Canada Council, the National Library, the National Archives, the Library of Parliament and the Official Languages Commission — will nominate three poets for consideration by the two Speakers of Parliament. The two Speakers will then select a parliamentary poet laureate who will hold office for a two-year term.

The duties of the parliamentary poet laureate will be minimalist. The two-year term will allow a wide variety of poets to be selected from every social segment, every artistic form, every literary school and every region of the country. The minimal objective is to attract the public, Parliament and parliamentarians themselves, to poetry and the nature and need of it — the need for both the written and spoken word — in our society.

In her recent collection of essays *Quarrel and Quandary*, the brilliant writer Cynthia Ozick addressed the question "What is poetry about?" She parsed and dissected the question carefully. She said that each poem is unique, resisting categorization. A poem may consent to a particular form — a haiku, a sonnet or a villanelle. Most often the form would be free. It is possible to say what a single poem is about, yet what can be said about "poetry"? Is it collective? Is it plural? Is it a universe? Is it an emanation? Is it endemic? Does it belong to a song, or is it the child or perhaps the parent of philosophy? Is it only utilitarian? Is it symbolic? Is it religious? It is representative of the divine when the second commandment suppresses physical expression of divine representation.

Ozick recalls that when the Greek Syrians conquered Jerusalem, invaded the first temple and found no statutes of a god, they supposed that the "people in the book" were atheistic; yet, as Ozick suggests, "freeing the metaphysical from limits of literalism...also freed art."

Poetry, one therefore can conclude, is the absolute freest of all artistic forms. For poetry, for the word, there can be no second commandment. Creation and the creator cannot be separated from the word.

In the beginning was "the word," so Ozick concludes that poetry is not often prophesy and poets are not often prophets; but, it is inescapable that all true prophets are poets.

Honourable senators, all can agree that freedom of thought is best encapsulated in poetry and that poets often became prophetic. Therefore, what a cost-effective offer to expand choice and freedom of thought through the sparse office of this minimalist proposal for a parliamentary poet laureate.

Ozick concludes her essay with these thoughts: "And poetry, because it is timeless, takes time." She selected W.H. Auden, a great poet, to have the last word on the things both infinite and infinitesimal that poetry is about:

> Were all stars to disappear or die
> I should learn to look at an empty sky
> And feel its total darkness sublime,
> Though this might take me a little time.

Honourable senators, for just a little of your time, we could give birth to a parliamentary poet laureate. We can be godfathers and godmothers to a simple literate counter-revolution. All great ideas start with a majority of one. This bill would be a slender counterweight to those who insist that poetry is irrelevant, that individuals do not count in this collectivist age, that choice is not necessary, or that the word is withering or, worse, is irrelevant in the digital age.

Honourable senators, I commend yet once again this bill for your quick and positive affirmation without reference to committee.

On motion of Senator Kinsella, debate adjourned.

## QUESTION OF PRIVILEGE

SELECTION OF THE LEADER OF THE OPPOSITION

**The Hon. the Speaker:** Honourable senators, we have now completed Orders of the Day and, pursuant to Senator St. Germain's intervention under Senators' Statements, we now return to the question of privilege that he raised.

As this is my first experience with a question of privilege or a point of order, I will indicate that the rules pertaining to questions of privilege are set out in rule 43 of the *Rules of the Senate of Canada*. Rule 18(3) deals with the hearing of interventions on a question of privilege or a point of order. That rule essentially indicates that interventions are appropriate and that the Speaker will designate when he or she has heard sufficient to make a ruling or determination.

I say that, honourable senators, only to indicate what is guiding me. I now call on Senator St. Germain to raise his question of privilege.

**Hon. Gerry St. Germain:** Honourable senators, I rise on a question of privilege on a matter of importance to all senators as it impacts upon the way in which we govern ourselves as senators.

A situation has arisen in this place that is so new and unusual that it begs for resolution. The fact that there is no resolution of this matter is, I believe, a breach of my privileges as a member of the Senate of Canada. I understand that questions of privilege are rarely recognized as being *prima facie*, but I believe that this is such a unique situation that it cries out for an answer.

According to *Bourinot's Parliamentary Procedure* at page 56:

> It has been frequently decided that the following matters fall within the category of breaches of privileges:
>
> 1. Disobedience to, or evasion of, any of the orders or rules which are made for the convenience or efficiency of the proceedings of house.

The first rule of the Senate states that where we have no procedures, we must rely on precedent. It is also clear that we are bound by tradition in this chamber. The failure to adhere to our rules and procedures in this matter constitutes an evasion and, therefore, a breach of privilege.

Joseph Maingot states that to constitute privilege, generally there must be some improper obstruction to the member performing his parliamentary work in either a direct or constructive way.

• (1630)

I submit to all senators that over the past several months some discussion has taken place between the officers of this place and the leaders of the other parties. I was advised that I would be treated as an independent senator. These discussions, I believe, have resulted in my being denied my privileges according to the traditions of this place. This constitutes an improper obstruction. Based on existing tradition and precedent, I believe my right to claim the office of the Leader of the Official Opposition in the Senate has been denied me. To reiterate Bourinot, this is an "evasion of...the orders or rules..."

Precedent for this question of privilege does exist. As stated in *House of Commons Procedure and Practice*, edited by Marleau and Monpetit, at page 87:

> On December 6, 1978, in finding that a *prima facie* contempt of the House existed, Speaker Jerome ruled that a government official, by deliberately misleading a Minister, had impeded a Member in the performance of his duties and consequently obstructed the House itself.

Honourable senators, I do not presume to state that someone has deliberately misled me — on the contrary. Nonetheless, the lack of inclusion of myself in discussions concerning the status of party leadership in this chamber must be construed as an inadvertent impediment of my ability to carry out my duties. The deliberate nature of the aforementioned ruling is of less significance than the fact that the member was impeded. The impediment of a third party constituted the breach.

Also in 1993, the Speaker of the other place ruled on matters relating to the orders of that place and agreed that they were indeed questions of privilege. The particular situation dealt with the late tabling of a government response to a committee of the other place. In the Speaker's ruling, reported in the *House of Commons Debates* of April 19, 1993, at page 18106: "Members cannot function if they do not have access to the material they need for work and if our rules are being ignored..."

Most members of either chamber would agree with this Speaker's rulings. Of particular importance is the recognition by the Speaker that ignoring the rules of that place constituted a breach of privilege.

We must respect precedent and tradition, honourable senators. We must respect the purpose for which the Senate was created. Finally, we must respect the changing nature of Canada's political landscape, which I believe is most significant.

Honourable senators, let me first address the matter of our precedent and traditions. In situations where we have no clear procedures, our rules are clear. The very first rule of our Senate is the following:

> 1. (1) In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

Our very first rule demands that we look to precedent for answers to questions not governed by our rules and procedures.

Honourable senators, precedent does exist. First, let us look at our mother Parliament, Westminster. What does precedent from the United Kingdom have to say on this matter?

According to Erskine May at page 214, an authority we often refer to in Canada, the following is the practice:

> The Official Opposition party (by reference to the House of Commons) and the opposition party with the largest number of members in the Lords, other than the Official Opposition, are given financial assistance from public funds in respect of their parliamentary duties.

More specifically, the British Ministerial and Other Salaries Act passed in 1975 states:

> 2. (1) In this Act "Leader of the Opposition" means, in relation to either House of Parliament, that a Member of that House who is for the time being the Leader of that House of the party in opposition to Her Majesty's Government having the greatest numerical strength in the House of Commons; and "Chief Opposition Whip" means, in relation to either House of Parliament, the person for the time being nominated as such by the Leader of the Opposition in that House; and "Assistant Opposition Whip", in relation to the House of Commons, means a person for the time being nominated as such, and to be paid as such, by the Leader of the Opposition in the House of Commons.

Finally, on the matter of British precedent, let me quote from a letter written by the past Earl of Listowel recalling his days in the House of Lords:

> The House of Lords when I took my seat shortly after my father's untimely death of pneumonia in 1931 — which took place a few years before the discovery of penicillin and other antibiotics — was a very different place from what it has become over 60 years later.
>
> I have now become the longest active member, having served continuously in Government or Opposition or as Chairman of Committees, apart from a short break during the war years, and my three years in Ghana as Governor-General.
>
> It was at this time an entirely hereditary chamber, apart of course from a handful of Bishops and Law Lords. The Labour Party, as the Official Opposition, could only man two Benches, including the front Bench, and in 1938 could still muster no more than 15 peers. They were greatly outnumbered by the 80 Liberals, also of course on the Opposition side of the House. In fact, I remember a protracted argument between my Leader, Lord Ponsonby, and the Leader of Liberal Party, the Marquis of Crewe, about which party was entitled to occupy the Opposition Benches immediately facing the Ministers sitting on the Government Front Bench. It was decided in favour of Lord Ponsonby, because the Labour Party was the official Opposition and occupied this position on the Opposition Front Bench in the House of Commons. The Conservative Party had even then a permanent majority of between 300 and 400 peers in the Upper House.

This letter was supplied by Mr. J.M. Davies, Clerk of the House of Lords, and a copy is now in the possession of our own Clerk of the Senate.

Clearly, honourable senators, strong precedent from Britain exists, but what about other Commonwealth nations?

Australia also has a Senate and has enjoyed a multitude of political parties. An inquiry to the Office of the Clerk of the Australian Senate produced the following response from Dr. Rosemary Laing, Clerk Assistant, Procedure:

> Since 1901, the Opposition in the Senate has always been the same political party as the Opposition in the House of Representatives.
>
> No precedent exists in the Australian parliament for the Official Opposition in the Senate to be chosen on the basis of the party numbers in the Senate rather than with reference to the party serving in Opposition in the House of Representatives.
>
> Following the election of 1903, the Protectionists held the largest number of seats in the House of Representatives (26), the Freetrade Party being the next largest group (25), and forming the Opposition. The Labor Party held the largest number of seats in the Senate, but the Opposition continued to be the Freetrade Party. This situation was repeated during the first Deakin (Protectionist) government from 1905-1908, when the Freetrade Party formed the Opposition in both the House of Representatives and the Senate, but the Labour Party held the largest number of seats in the Senate.

Finally, let us look to our own traditions and precedents. Since Confederation the leaders of this place have been appointed by their counterparts in the other place.

Honourable senators, the common practice is clear: Leaders in the House of Commons choose leaders in the Senate. There is only one example in Canadian history of a variation of this practice.

In 1994, an exception of sorts did occur when the leader of the Progressive Conservative Party, the Honourable Jean Charest, allowed Progressive Conservative senators to select their own leader in the Senate.

This cannot be considered precedent for a number of reasons. First, only two parties enjoyed representation in the upper chamber. The opposition at the time, the Bloc Québécois, had no Senate representation. Second, the Progressive Conservative Party, which had made the decision at the time, did not enjoy party status in the lower chamber.

The only other possible instance where precedent could have been set in Canada was in 1921 when the Progressives formed the second largest party in the House of Commons, but the Progressives, under Thomas Crerar, refused to serve as the opposition and allowed the Conservatives to retain the role.

The tradition of selecting Senate opposition political leadership is clearly a method of appointment with reference to the Leader of the Opposition in the House of Commons. This precedent has not been undermined by the circumstances of recent years, as Her Majesty's Loyal Opposition in the House of Commons has not enjoyed representation in the Senate since 1993 and therefore could not name a leader in the upper chamber until now.

The Senate's own traditions speak to the abuse of procedure in matters of this kind. Traditionally, the Speaker takes judicial notice of who is the Leader of the Official Opposition in the other place, and this reality is reflected in the Senate by the recognition of the government and opposition leaders appointed in this place. Historically and traditionally, the members of that party form the opposition in the Senate.

• (1640)

Honourable senators, members of the Senate are subject to procedure. Where no defined procedure exists in the Senate's own rules, tradition and precedent must be examined.

The tradition of the Leader of the Opposition in the House of Commons appointing the Leader of the Opposition in the Senate is common practice in Canada. As well, precedent from the British Parliament is clear. Thus, the Senate is breaching its own rules and procedures and, in doing so, is harming the ability of some senators to do the work for which they have been appointed.

Second, the Senate must respect the reasons for the creation of this chamber by the Fathers of Confederation.

According to the Senate's own self-description as posted on our Web site, the Fathers of Confederation gave the Senate the important role of protecting regional, provincial and minority interests. This is, indeed, an important role, one that this chamber may be in danger of forgetting.

The lack of representation in the Senate for the almost 50 per cent of Canadians who did not vote for the two parties dominating the upper chamber should be of some considerable concern to all senators. The recognition of the Canadian Alliance, a legitimate opposition party, would address the lack of representation of some 25 per cent of Canadians who supported the Canadian Alliance in the most recent federal election. In particular, this would address the lack of representation for over 212,000 Quebecers and over 114,000 Atlantic Canadians who voted for the Canadian Alliance. These voters have no representation in either chamber.

As well, Western Canada elected 64 Canadian Alliance members of Parliament out of a total of 88 seats in the four Western provinces. Approximately 50 per cent of Western Canada's 3,772,814 voters voted for the Canadian Alliance in the last election. These voters have no representation in the Canadian Senate.

Canada's Senate has been the object of attack and derision for some time, very unfairly I must say. I do not think anyone is served well by this denigration. On the other hand, the inability of institutions to adapt to changing circumstances, particularly those within our own control, should be of concern to any organization.

The Senate would both diminish its critics and further legitimize its operations in the eyes of the general public should it consider the arguments outlined here. One of the primary purposes of this chamber is to protect "minority, sectional and provincial interests." I put it to honourable senators that much work needs to be done to live up to this intended purpose.

Finally, we must respect the changing nature of Canada's political landscape. The days of two party dominance in this country are at an end, if indeed such a system ever truly existed. The Liberals and the Progressive Conservatives are heirs to proud political traditions, but there are many other proud traditions in this country — the Liberal-Conservatives, the Conservatives, the United Farmers, the Social Credit Party, the Progressives, the CCF, the Union Nationale, the Créditistes, the Reform Party and, unfortunately, some independence movements. All have a place in our democracy. To deny this reality is to deny Canada and to deny how Canada has grown and changed.

The time will come when another political party will form the government, as the time eventually came for new parties to serve as the official opposition. The Senate must prepare itself for these eventualities by creating the necessary rules and procedures to respect these changes. The denial of a place in the Senate for the Canadian Alliance is not simply an irritant that might one day go away. It is my hope that out of this question of privilege the Senate will make a historic attempt to adapt to change instead of ignoring it.

Honourable senators, when this chamber chose, whether willingly or not, to ignore its traditions and precedent and deny me my rightful place, a serious breach of privilege occurred. This breach of privilege not only denies my party its place but causes the Senate to deny its very own rules. This breach can be addressed through a thoughtful, forward-thinking approach to the rules of this place with regard to the status of parliamentary political parties.

Honourable senators, let us respect our own traditions. Let us respect the purpose for which the Fathers of Confederation created this chamber. Let us respect the changing nature of this great country.

Honourable senators, a ruling on this matter is of the utmost importance to this chamber, to Parliament and to Canadians. I therefore request that the Senate take the time to provide direction on this matter at hand. There is considerable precedent for the Speaker to do so.

In this regard, I refer to page 125 of *House of Commons Procedure and Practice*, edited by Marleau and Montpetit, where it is stated:

> In informing the House...the Chair customarily explains (often in some detail) the factors which resulted in this finding. However, in such cases, the Chair will often acknowledge the existence of a genuine grievance and may recommend avenues of redress.

Regardless of the outcome, I would ask that the Speaker give some strong direction regarding the resolution of this matter. The greatest expertise available for an equitable resolution lies in the offices of the clerks of this Parliament. I beseech the Speaker to provide direction in this matter.

Honourable senators, I made reference to the Commons in the United Kingdom where the Speaker has the statutory authority to determine who shall be designated as Leader of the Opposition in the lower chamber. I refer here to the Ministerial and Other Salaries Act, 1975, in that regard.

In light of the lack of existing rules and procedures in this place, the intervention of the Speaker in this matter, as per the United Kingdom, would be welcome.

The intervention is not without precedent in Canada. In the House of Commons in late 1995, the Reform Party achieved the same number of seats as the Bloc Québécois, which was the Official Opposition prior to the general election. The Speaker ruled on the matter in 1996, and the Bloc Québécois would remain as the Official Opposition on the basis of incumbency.

This is a serious and potentially historic matter. A decision of the Speaker and this chamber — of each and every honourable senator — beyond the basic ruling of *prima facie* is of the utmost importance. I submit that my privilege as a senator in this place has been breached by the fact that the rules, precedents and traditions of this place are themselves being breached. Having been designated the Leader of the Official Opposition in the Senate by the Leader of the Official Opposition in the other place, I humbly submit that I have a right to claim the role of Leader of the Opposition in the Senate.

In conclusion, I have tabled today a document that I hope will be scrutinized fully, and I am sure it will. I look forward to my colleagues' learned assistance on this very historic matter.

I ask His Honour to give this matter due consideration. I thank him for his patience.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, Senator St. Germain is raising a very serious matter. Of course, questions of privilege should never be treated lightly. Let me try to understand the arguments as raised by our colleague and address each of his points in turn.



Senator St. Germain has changed his political allegiance and now chooses to sit in this chamber as a member of the Canadian Alliance. Because the Canadian Alliance is recognized as the Official Opposition by the other House of Parliament, the Honourable Senator St. Germain seems to be suggesting that he, as the lone member of that party sitting in this chamber, should be the Leader of the Opposition. Furthermore, his contention is that the failure of the Senate to recognize him as Leader of the Opposition in the Senate impairs his ability to function as a senator and is, therefore, a breach of his parliamentary privilege.

In other words, the honourable senator seems to advance the position that a decision in the other place determines the internal organization of the Senate and that the Senate has no say in this matter. That is a position we do not share. In any case, this is a matter of substantive disagreement and not a question of privilege.

• (1650)

The Honourable Senator St. Germain seems to be contending that rule 1 of the Senate has been broken. I do not agree that it has; however, if that were the case, he should be rising on a point of order and not on a question of privilege.

Let me deal with the senator's point that the situation impairs his ability to function as a senator.

The Honourable Senator St. Germain has access to the same rights and privileges as every other senator, namely, the right to attend the Senate and its committees, to vote in the Senate, to propose motions and amendments, to participate in Question Period, to participate in Senators' Statements and to propose inquiries. The honourable senator also has full access to office space, a global budget for staff and supplies, telecommunication services, a travel allowance, access to parliamentary documents, and the Senate has allocated him a research fund. Those research funds are afforded equally to each senator. Therefore, I fail to see how his ability to function as a senator has changed in any way, let alone been impaired.

Honourable senators, rule 4(*d*)(ii) defines the Leader of the Opposition as follows:

> ...the Senator occupying the recognized position of Leader of the Opposition in the Senate or a Senator acting for that Senator.

The question, honourable senators, is this: Who does the recognizing?

It would seem from the intervention of the Honourable Senator St. Germain that he believes the House of Commons performs the act of recognizing the Leader of the Opposition under a rule of the Senate. I would submit that it is the Senate that determines the meaning of its own rules.

The longstanding practice of the Senate is to recognize as the opposition in the Senate the largest party represented in the Senate that is not the government. That party has always determined its own leadership, including the Leader of the Opposition. The Liberal Party has formed the government. The next largest party represented in this house is the Progressive Conservatives. They have duly chosen Senator Lynch-Staunton to be the Leader of the Opposition.

The Honourable Senator St. Germain refers to the Speaker's ruling in the House of Commons in 1996. Honourable senators will remember that the reason the Speaker was called upon to rule on the status of the official opposition in that instance was that the election had resulted in a tie between two parties for the designation of official opposition. Faced with equal numbers, the Speaker ruled that incumbency should prevail. Obviously, the first consideration was numbers; otherwise, the largest party would have been the official opposition without question. That situation does not apply in this instance.

Honourable senators, it may be that we are entering a new era — and we certainly are — where the Senate may wish to review its internal organization and the manner in which parties are recognized. That is a matter for the Senate to decide, perhaps through debate in the Standing Committee on Privileges, Standing Rules and Orders. We do not feel that this is a *prima facie* case of privilege.

[*Translation*]

**Hon. Marcel Prud'homme:** Honourable senators, I was waiting to hear what the official opposition, at least the one I see here today, had to say. However, nothing was said. Do the Rules of the Senate allow us to ask that the debate on this issue be adjourned until tomorrow so we are better prepared to respond to Senator St. Germain's arguments and to those so ably put forward by Senator Robichaud, the Deputy Leader of the Government? Otherwise, I will have to make a few remarks, but they will be very brief.

[*English*]

**The Hon. the Speaker:** Honourable senators, I would rather not have to deal with the issue of postponing interventions for another day. Matters of privilege and order are usually matters of some urgency, and, if not, they are matters that should be dealt with expeditiously. Senator St. Germain may wish to comment on this, but if at all possible I would like to hear interventions today. Once I have heard them, I can make a decision on whether to take the matter under consideration or to rule from the Chair. My inclination is to take the matter under consideration, but I will have a brief consultation and give some thought to it during the course of any further intervention.

Senator Prud'homme, if I could have the benefit of your views now, that would be my preference.

**Senator Prud'homme:** Honourable senators, this is the first time I have had occasion to rise in this new Parliament, I should like to say how happy I am to see His Honour in the Chair and how sad I am seeing the one who preceded him not continue. Both are good friends, and both honour the Chair. It was decided who would be Chair, and I know that our long-time friendship will most likely continue.

I will not prolong the debate today; however, I would suggest that His Honour not render a decision from the Chair today. Once the interventions have been completed, I would suggest that His Honour might wish to reflect and come back tomorrow with a decision as to whether or not Senator St. Germain has a *prima facie* question of privilege. In my opinion, the honourable senator may have a good point.

I will now go back in history, to 1993, when the Bloc was elected as the Official Opposition. I know for certain that a meeting took place between the then Deputy Prime Minister and Mr. Bouchard as to the implications of that with respect to Mr. Bouchard's position as Leader of Her Majesty's Loyal Opposition. In that discussion, I am sure the question arose as to Mr. Bouchard's rights. His rights included the availability of a certain office, membership on particular committees, et cetera, plus the potential right to appoint the Leader of the Opposition in the Senate.

I will probably be contradicted on what I am about to say, but honorable senators may recall that, at that time, some people thought that I may have had an indication from Mr. Bouchard with respect to assuming the Leader of the Opposition for the Bloc. Such was not the case, but I never denied it because I refuse to comment on what is written in the newspapers. Those of you who may be curious and who are good researchers can look back at those records. I never denied that, but I never encouraged it. I just smiled and laughed. I thought it was quite interesting to read.

I, a federalist, yes, a nationalist, a Canadien français du Québec, yes, but a federalist, could hardly be the Leader of the Opposition representing a party that did not believe in my beliefs.

Having said that, I know that the Conservative Party of the day in the Senate went through much soul searching as to the possibility that such a thing could indeed take place. If they went through such agony in deciding whether such a thing could take place, that meant that the question had never been raised before. I would like to know who recommended the Leader of Opposition in the Senate in 1979 when Mr. Trudeau became the Leader of the Opposition in the House of Commons. Who did Mr. Trudeau recommend? I would like to know, when the Conservatives were in opposition in the House of Commons, if the leader of the party of that day recommended, yes or no —

• (1700)

**Senator LeBreton:** No.

**Senator Prud'homme:** I must be very careful if Senator LeBreton says no so categorically. She has much more knowledge than I on that, but I think it was suggested. In any case, Senator St. Germain is raising a good question.

I know what happened next. There was an election to choose a Leader of the Opposition among the party members. That no one would deny. I am very pleased that we sit now with Senator Lynch-Staunton as Leader of the Opposition here. He is an excellent gentleman, an excellent travelling companion, very knowledgeable. There is no negative reflection on his personality; it is only a question of process raised by Senator St. Germain.

Perhaps His Honour would require a little longer reflection with his able staff or perhaps he may be ready to rule immediately, today. My preference, as a friend of the court, as we say, would be for His Honour to take whatever time is necessary. Senator St. Germain is not demanding an immediate reply.

We can wait for His Honour to render a clear decision on the record as it has never been recorded before. I did not enter the debate in 1993. I was a new senator at that time, the first time the question was raised.

His Honour may wish to reflect on the matter and render his decision tomorrow. Like my friend, I am convinced that he will abide by his own decision tomorrow or whenever he sees fit to render his decision.

**The Hon. the Speaker:** I see no other honourable senators wishing to intervene on this issue. I have listened. I thank Senators St. Germain, Robichaud and Prud'homme for their interventions. I will take the matter under consideration and render a decision on whether a *prima facie* case has been successfully argued or whether it is a matter of order, or neither.

[*Translation*]

## REVIEW OF ANTI-DRUG POLICY

MOTION TO ESTABLISH SPECIAL
SENATE COMMITTEE—DEBATE ADJOURNED

**Hon. Pierre Claude Nolin,** pursuant to notice of January 31, 2001, moved:

> That a Special Committee of the Senate be appointed for a period of three years to thoroughly examine Canada's anti-drug legislation and policies, to carry out a broad consultation of the Canadian public, and finally, to make recommendations for a national strategy on illegal drugs developed by and for Canadians;
>
> That the Committee, in pursuing this mandate, give particular importance to issues relating to cannabis and prepare an interim report on cannabis:
>
> That without being limited in its mandate by the following, the committee be authorized to:
>
> – review the federal government's policy on illegal drugs in Canada, its effectiveness, and the ways in which it is implemented and enforced;
>
> – study public policy approaches adopted by other countries and determine if there are applications to Canada's needs;
>
> – examine Canada's international role and obligations under United Nations conventions on narcotics and the Universal Declaration of Human Rights and other related treaties in order to determine whether these treaties authorise it to take action other than laying criminal charges and imposing sentences at the international level;
>
> – examine the social and health effects of illegal drugs and explore the potential consequences and impacts of alternative policies;
>
> – examine any other issue respecting Canada's anti-drug policy that the Committee considers appropriate to the completion of its mandate.
>
> That the Special Committee be composed of five Senators and that three members constitute a quorum;
>
> That the Honourable Senators Kenny, Molgat, Nolin, Rossiter and a fifth senator to be named by the Chief Government Whip be named to the Committee;
>
> That the Committee have the 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 from day to day as may be ordered by the Committee;
>
> That the briefs received and testimony heard during consideration of Bill C-8, An Act respecting the control of certain drugs, their precursors and other substances, by the Standing Senate Committee on Legal and Constitutional Affairs during the Second Session of the Thirty-fifth Parliament be referred to the Committee;
>
> That the papers and evidence received and taken on the subject and the work accomplished by the Special Committee on Illegal Drugs during the Second Session of the Thirty-sixth Parliament be referred to the Committee;
>
> That the Committee have the power to authorize television, radio and electronic broadcasting, as it deems appropriate, or any or all of its proceedings;
>
> That the Committee be granted leave to sit when the Senate has been adjourned pursuant to subsection 95(2) of the *Rules of the Senate*; and
>
> That the Committee submit its final report not later than three years from the date of its being constituted.

He said: Honourable senators, as the water has gone under the bridge, you will permit me a small digression. In 1996, we had before us Bill C-8, respecting the control of certain drugs and other substances. After more than three months' study, the Senate Standing Committee on Legal and Constitutional Affairs, then chaired by Senator Sharon Carstairs, reached the clear conclusion that the bill required a number of amendments, which we managed to draft, and especially that it was vital to do a thorough study in order to provide the technical, moral or sociological information on the control of illegal drugs, which was lacking. Many of the experts we heard said that the legal framework incorporated in the law was not only inappropriate to the body of accumulated knowledge but was ineffective and produced human and social consequences often much more serious than the drugs themselves.

As the result of a motion I put to this house in June 1999, the Senate struck a special committee to study illegal drugs in Canada, in April 2000. This special committee, which had a mandate to thoroughly examine all policies on illegal drugs in the light of scientific knowledge and Canadian public opinion, sat until the election call in October. I am pleased to table a brief report describing the main work begun by the committee. I am asking you today, honourable senators, to renew the mandate of this special committee. Copies of the report will be distributed to you, and I would remind you that this document was e-mailed to you several days before the Speech from the Throne.

Honourable senators, it is essential that we conduct a rigorous review of all the problems relating to illegal drugs in Canada, because the challenges that illegal drugs continue to pose to Canadian society are huge and very serious.

They are, first, of a legal nature, because some landmark decisions by higher courts have questioned the provisions of the current legislation regarding the use of cannabis for therapeutic purposes. Moreover, a number of legal experts feel that current policies regarding the implementation of the legislation contribute to undermining individual rights and even Canadian sovereignty.

The challenges are also of an economic nature, since drug abuse and all the measures relating to illegal drugs generate major costs for Canadian society. Some specialized bodies estimate the total direct costs at about $1.5 billion annually. Considering the enormous amounts of money at stake, we have to ask whether our policies are the most effective and cost-effective ones.

The challenges are also of a social nature, since illegal drugs are a major cause of crime, particularly in the case of organized crime. Regardless of what one may think about tougher anti-drug legislation, we all know that such a measure will target the symptoms rather than the root cause of the problem. And what about the effect of drugs on certain risk groups in Canadian society, particularly aboriginal communities?

The challenges are also of an individual nature. Indeed, we must take into account the lives that are broken either by the drugs themselves, by the public policies that we have implemented or by those that we did not.

Finally, illegal drug policies pose challenges in international relations, including with our neighbour, the United States.

• (1710)

For all these reasons, the mandate of the special Senate committee on illegal drugs is even more critical. Close to 15 years after Canada's Drug Strategy was first adopted, the time has come to step back and take an in-depth look at public policies on illegal drugs. Far from contradicting any measures the various levels of government might take immediately concerning illegal drugs, this exercise will support them in several ways. The special committee will foster and support essential research. As well, the committee's proceedings will be public, thus passing on firsthand and rigorous information to the Canadian public. Finally, in view of their importance, issues regarding cannabis will be given particular attention during the first year of the committee's work and will lead to the drafting of an interim report on every aspect of policies relating to this drug.

You know as I do, honourable senators, that in the Senate we have the advantage of being able to conduct rigorous reviews without concern for party politics. Issues relating to illegal drugs and public policies in this matter require just this kind of review. In addition to being able to conduct studies and hear expert witnesses, we can also hear citizens of this country and, at the same time, pass on to them complete and objective information. These are advantages the special committee will certainly want to make full use of.

Allow me, honourable senators, to highlight some aspects of the problem of illegal drugs in Canada.

I shall start with the extent of the phenomenon. The first national study on drug abuse dates back to 1994. It revealed, among other things, that close to 24 per cent of Canadians had used illegal drugs at one time or another; close to 23 per cent of Canadians had used cannabis; some 4 per cent had used cocaine and less than 1 per cent had used other drugs.

A number of more recent studies carried out in some of the provinces, including Quebec, show a change in the consumption patterns, especially among the young people. For instance, the 1998 Health and Social Survey released a few weeks ago and a study presented to the special committee during its public hearing on October 16, 2000, by Professor Zoccolillo, of McGill University, indicate among other things an increase in the use of cannabis, especially among young people; an increase in so-called problem use among high school students; a possible increase of some forms of addiction, including to cannabis; a possible increase in the use of hard drugs among young people, especially heroin; and last, more frequent use of multiple drugs, or what is called drug cocktails.

Studies in other countries such as France, Switzerland, Belgium, England, Australia and the United States also tend to confirm these patterns.

We are also aware that abuse of various substances is causing major problems in several native communities, where the use rate seems to be higher, multiple drug use more frequent and the impacts of substance abuse, namely a higher rate of family violence and deaths, are more serious. We recently had a very tragic example of this problem with native youths from Labrador sniffing gasoline. An in-depth review of the problems caused by illegal drugs cannot ignore the unique plight of the First Nations and cannot, obviously, deal only with cannabis.

Other groups of the population are at high risk. Studies indicate that injection drug users are now one of the groups at highest risk for transmitting the HIV-AIDS virus. Users of the so-called hard drugs are also at risk, as indicated by the stunning figure of 3,000 drug-related deaths for the city of Vancouver alone since 1992 because of the lack of information and prevention and treatment programs. Would the suppression of drugs result in the death of users? Inmates of jails and penitentiaries are also a high-risk group. We know that a considerable number of inmates use drugs during their incarceration, and yet there are no mechanisms for treatment or even prevention. A number of inmates become habitual users during incarceration. I am talking of injectable drugs, leading to the transmission of AIDS and to death, not cannabis.

We know that there is a far from insignificant relationship between illegal drugs and crime. I hardly need stress the problems connected to organized crime. Too often we ignore the fact that a significant proportion of offences committed are connected to drug use or drug seeking. According to some estimates, no less than 50 per cent of all crime is related to substance abuse, drugs or alcohol. If this were so — and the special committee will need to look into this matter carefully — the social and economic costs to Canadian society are enormous. Let us keep in mind that the National Crime Prevention Centre has estimated the direct and indirect costs of crime at $35 billion yearly, or $1,200 per person. Even half that figure is a huge amount, particularly when one knows that there are effective and cost-effective ways of preventing substance abuse and the crime-generating effects of drug use. Certain estimates — which also merit careful consideration by the committee — estimate the annual costs of suppressing drugs at over $400 million, or nearly $13 per person. This figure does not include the indirect costs relating to those who are sentenced and imprisoned: court time, prison time, the resultant greater difficulty in getting into the job market, finishing schooling, maintaining emotional relationships. The impacts of judicial control policies need to be examined as well. In fact, a number of analysts are of the opinion that police repression is one of the major factors in drug-related crime.

In fact, a relatively disturbing trend in the application of the legislation on drugs may be seen in Canada. Despite the expressed desire for a policy balancing the four pillars of prevention, education, repression and treatment, there is a significant increase in charges for possession of drugs, including cannabis. This increase has occurred as overall crime reported to the police has been on the decrease for the past seven years. In 1997, over 40,000 people were charged with offences relating to cannabis alone — 65,000 in the case of all drugs — and over 18,000 were sentenced; 26 per cent of those charged with cannabis related offences were under 18, and 60 per cent were under 25. Furthermore, and despite all too commonly held beliefs, during this same period of decreased delinquency, the rate of incarceration and the overall severity of sentences in Canada increased rather than decreased.

Another subject of concern is the infringement of the basic rights of individuals and certain questionable police practices. A disturbing documentary broadcast on the CBC's program *the fifth estate* in January raised questions about practices of police cooperation between the RCMP and the American DEA. Experts in international law contend that certain aspects of Canada's very sovereignty are at stake.

According to a number of experts, Canada is to a large extent following a drug war policy borrowed in part from our American neighbours. According to others, Canada's policy is balanced among various approaches. In both cases, caution is necessary, and we would be mistaken to prejudice Canadian policy on the basis of information provided essentially by the media. Everything would indicate that the policy followed in the field is complex and varies from province to province and even from city to city within the same province. In addition, experts are far from agreeing on the current direction of Canadian policy. The distribution of funding and resources among each of the four pillars much be examined in depth along with the type of action taken under each of them. In view of the growing number of so-called prevention programs, in the schools for example, it is time we asked whether the programs are effective and if the best prevention and education programs are being supported.

• (1720)

One can assume that even in the area of education and prevention a whole series of myths on the physiological and psychological effects of illegal drugs are still very much alive. Several studies on the therapeutic effects of cannabis were conducted over the past few years and were reflected in several recent decisions by the Supreme Courts in Ontario and Alberta. We realize that our beliefs and the results of research on drugs are not necessarily in agreement. A case in point is the "Gateway Drug" theory that cannabis leads to use of harder drugs. And what about these infamous hard drugs when we now know that tobacco addiction is worse than addiction to cocaine or heroin. We will have to revisit the myths and realities surrounding the concept of addiction and habituation to various drugs and their interconnection.

I want to raise one last point, honourable senators. Canada is a signatory of international conventions and treaties on narcotics, but also of more encompassing instruments such as the Universal Declaration of Human Rights and other related political and social conventions. We must respect our international commitments. On the other hand, we cannot take refuge behind the strict interpretation of treaties and conventions on narcotics. It is true that Canada, like others, has some leeway. The Netherlands are often given as an example, but several other countries have adopted policies better suited to their situation: Belgium very recently, Switzerland over the last two years, Australia, Italy, and to a certain extent England are some examples. These policies deal with cannabis as well as other drugs. The time has come to take the time to look at what is being done elsewhere to contribute to an earnest reflection on what we want for ourselves here.

Allow me a few more minutes, honourable senators.

[*English*]

• (1720)

**The Hon. the Speaker:** Honourable senators, I wish to point out that the time allotted to Senator Nolin has expired.

Honourable senators, is leave granted to extend the time?

**Hon. Senators:** Agreed.

**Hon. Anne C. Cools:** He has not asked for an extension.

**Senator Nolin:** For Senator Cools, I request consent to speak for another six pages.

[*Translation*]

Following my presentation on some of the problems posed by illegal drugs, three basic requirements come to mind.

First, a rigorous and comprehensive review of our policies on illegal drugs is necessary. If we must give particular attention to cannabis, that drug should not be singled out, nor the policies relating to it. Drugs are linked to one another. They are linked to crime, family violence, AIDS and to the social exclusion that hits many young people or aboriginal communities so hard. The drug phenomenon must be examined as a whole. Drugs cannot be separated. Similarly, the public policies that deal with them are supposed to form a consistent package. Should our review show that such is not the case and that ours is a piecemeal approach, then it would be high time to propose benchmarks for a more consistent system.

Second, the scientific community, experts in national and provincial anti-drug organizations and officials from the departments responsible for anti-drug policies are unanimous in pointing out and even condemning the weakness of our research effort on drugs in Canada, one of the worst among OECD countries.

As I said earlier, the most recent Canada-wide study on drug use dates back to 1994, yet there is every indication that drug use and the means employed have changed significantly since. We do not have data on the rulings issued by the courts, yet we fund major projects to create special tribunals on drugs. We do not have reliable data on the effectiveness of public policies, yet the crackdown alone costs hundreds of millions of dollars to the Canadian Treasury. Something must be done.

And third, the Canadian public expects and is demanding that we develop a public policy on drugs, one which is consistent, generous, and based on the values that underlie and characterize our country. The Canadian public expects rigorous and impartial information on illegal drugs and wants to take part in redefining the direction that a made in Canada and for Canada policy on illegal drugs should take. Public policy is ultimately up to citizens. Not only is it made for them but it must, to the extent possible, be made with them. For this to happen, information must be shared and disseminated and there must be also be education. This is the whole reason for the public hearings the committee is proposing to resume.

A public policy on illegal drugs cannot and must not be based on a collection of myths and beliefs, the preservation of individual fiefdoms and corporate interests. Similarly, a public policy will not reflect point for point the opinions gathered in a survey. Governing is about choice, and these choices must promote balance and strengthen the values on which our Canadian society is built. If a special Senate committee on illegal drugs succeeds in promoting research and summarizing the knowledge acquired, transmits objective information to Canadians encourages public debate and makes it possible to define a certain number of guidelines for a national public policy on drugs, such a committee, honourable senators, will have been visionary and will have fulfilled the role of this chamber in the eyes of Canadian society as a whole.

Honourable senators, the initial work of the special committee on illegal drugs, and other recent events and testimony, has convinced me even more of the need to take a rigorous and open-minded look at public policy in this area in order to propose to Canadian society the criteria for a regime worthy of the collective vision of Canadians in the next century. I therefore urge you to actively support the work of the special committee on illegal drugs.

[*English*]

**Senator Cools:** I wish to put a question to Senator Nolin. He has done a lot of work on this issue, work that will benefit us all.

The second paragraph of the reference states:

> That the Committee, in pursuing this mandate, give particular importance to issues relating to cannabis....

Perhaps Senator Nolin could tell us what those issues are.

**Senator Nolin:** The issues relating to cannabis are the same as those relating to other drugs. However, we must take into account the popularity of cannabis, to which I alluded in my speech, and the use of drug cocktails by younger Canadians.

It is proper to look at cannabis first, for two reasons. First, two major tribunal decisions are pending upon this Parliament.

• (1730)

The government must deal with the medical use of marijuana before the end of July or introduce an amendment to the drug law, Bill C-8. From what I understand, the government intends to move toward a rule or regulation under the law. Nevertheless, at the end of July, it must adopt a position in that respect.

Second, marijuana is a popular drug. The rate of criminality is going down for every crime save one — drugs. We owe it to Canadians to look at that drug first, to table an interim report, and then to follow through with a study of other drugs.

**Senator Cools:** Good answer.

On motion of Senator Robichaud, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

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