Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 70

OFFICIAL REPORT
(HANSARD)

Tuesday, November 20, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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

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

Published by the Senate
Available from Canada Communication Group — Publishing,
Public Works and Government Services Canada, Ottawa K1A 0S9,
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, November 20, 2001

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Anne C. Cools: Honourable senators, earlier today, pursuant to rule 43(3), I had given notice to the Senate through the Clerk of the Senate that I would be raising a question of privilege later this day.

As is required pursuant to rule 43(7) of the *Rules of the Senate*, I give oral notice that I will rise later this day to address my question of privilege. I intend to raise this question of privilege in respect of certain words spoken in the Senate during debate on Inquiry No. 8, last Thursday, November 8, 2001, which words I believe thwarted my privileges to speak in the Senate and my privileges to move adjournments of debate and to request leave of the Senate to revert; and also in respect of certain senators' wrong assertions about my attendance in the Senate; and also in respect of the confusion that day about certain Senate rules, the resulting imposition of conditions contrary to Senate rules on my speaking in the Senate; and also in respect of the distraction of the Speaker by certain Table officers while I was speaking.

As I said, honourable senators, I have given oral notice. It will be my intention to expand more fully later this day when the proper opportunity presents itself.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of the Honourable Helen Sham-Ho, an independent member of the Legislative Council of New South Wales, Australia, who has been selected to represent that Parliament at the Inaugural Canadian Parliamentary Seminar.

Hon. Senators: Hear, hear!

NATIONAL CHILD DAY

Hon. Landon Pearson: Honourable senators, today marks National Child Day. On November 20, 1989, the United Nations General Assembly adopted unanimously the Convention on the Rights of the Child. Canada ratified the convention in December 1991; and to commemorate these events, in 1993, the Parliament of Canada designated November 20 as National Child Day.

This morning, over 250 children and adolescents, parliamentarians, community leaders and representatives from government and non-governmental organizations gathered in this Senate chamber to celebrate the joy, the commitment and the energy of youth, to say "Yes for Children." "Yes for Children" is the name of the Global Movement for Children that is bringing together people of all ages to build a better world for children and all of us. The movement is about child participation, about action and about the accountability of governments to keep the promises they made to them at the World Summit for Children in 1990, which Canada co-chaired. Nelson Mandela and Graça Machel are its leaders, and I know that we have all been deeply moved by their message of hope for children they brought to us over the last few days in Toronto and here in Ottawa.

The Global Movement for Children is focused on the following 10 critical actions considered necessary to improve the lives of children and adolescents.

One: Leave no child behind. Every girl and boy is born free and equal in dignity and rights, and therefore all forms of discrimination affecting children must end.

Two: Put children first. In all actions related to children, the best interests of the child shall be our primary consideration.

Three: Care for every child. Children must get the best possible start in life. Their survival, growth and development in good health and with proper nutrition is the essential foundation of human development.

Four: Combat HIV/AIDS. Children and their families must be protected from the devastating impact of HIV/AIDS.

Five: Protect children from harm and exploitation. Children must be protected against any acts of violence, abuse, exploitation, discrimination and neglect. Immediate action must be taken to eliminate the worst forms of child labour.

Six: Listen to children and ensure their participation. Children and adolescents are resourceful citizens capable of helping to build a better future for all. We must respect their right to express themselves and participate in all matters affecting them in accordance with their age and maturity.

Seven: Educate every child. All girls and boys must have access to free and compulsory primary education. Gender disparities in primary and secondary education must be eliminated.

Eight: Protect children from war. Children must be protected from the horrors of armed conflict.

Nine: Protect the earth for children. We must safeguard our natural environment with its diversity of life, its beauty and its resources.

Ten: Eradicate poverty. We reaffirm our vows to break the cycle of poverty. This is what the leaders at the world summit said and this is what they will say at the Special Session on Children, to break the cycle of poverty, united in the conviction that efforts to eradicate poverty must begin with children and the realization of their rights.

•(1410)

Honourable senators, the outcome document of the United Nations Special Session on Children that was slated for September 2001 in the week following the terrorist attack on New York, which has now been rescheduled for May 2002, is a concerted effort by the global community to come to terms with the challenge and the promise of the largest and youngest generation the world has ever known. The document is called "A World Fit for Children."

As members of the human family, each of us is responsible and all of us are accountable. We will change the world with children.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, today we are celebrating National Child Day. In 1993, the Government of Canada designated this date to commemorate the adoption by the United Nations General Assembly on November 20, 1989, of the UN Convention on the Rights of the Child.

Adoption of that text marked a milestone in the search for greater recognition and enhancement of the rights of the child. It marked the international community's recognition of children's vulnerability and the resulting need to protect them. For example, article 3 of the 1989 Convention states as follows:

> ...in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Honourable senators, this year National Child Day is particularly special in that we are in the process of examining Bill C-7, the Youth Criminal Justice Act. In recent weeks, your Legal and Constitutional Affairs Committee has, despite a tight time frame, carried out a rigorous and non-partisan examination of the provisions of this bill.

Throughout this exercise, a number of the committee members noted that certain provisions of Bill C-7 might be challenged, not only under the Canadian Charter of Rights and Freedoms, but also under the 1989 Convention.

What is more, a number of expert witnesses voiced serious reservations concerning the conformity of this legislation with international obligations. In order to remedy this, your committee is therefore recommending 14 amendments. One of these will encourage the courts to take into consideration the principles and provisions of the 1989 Convention when interpreting Bill C-7. I would emphasize that nine of the committee members supported these proposed amendments.

Honourable senators, since Canada's future and its prosperity depend in large part upon its children, we have a duty as parliamentarians and as parents to ensure that the reform of the youth justice system as proposed by the Minister of Justice will respect our international commitments.

To that end, I would invite you on this National Child Day to take note of the remarkable accomplishments of the Legal and Constitutional Affairs Committee and of its recommendations, in order to ensure that the rights, needs and best interests of millions of young Canadians are respected by this legislation.

[*English*]

Hon. B. Alasdair Graham: Honourable senators, Regent Park, just slightly east of Toronto's downtown centre, is Canada's oldest housing project. Originally known as Cabbagetown, due to the cabbages that were found growing in the front yards of homes occupied by the Irish immigrants who originally settled there, it became, over the course of strong immigration waves into Canada over the decades, a microcosm of the world community. Over 30 languages are listed as the mother tongues of the children who attend Regent Park Public School, the beautiful children of the human family whom we are privileged to call Canadian.

A wonderful gentleman by the name of Stanley Gizzle, a citizenship judge and former leader of the sleeping-car porter advocacy group, visited the school a few years ago and called the student population "a garden of beautiful flowers."

Today, on National Child Day, an event that owes so much to the remarkable dedication of our colleague Senator Landon Pearson to all of the world's children, we celebrate the lives of all our beautiful flowers.

We think of the unanimous adoption of the United Nations General Assembly Rights of the Child in 1989. We reflect upon the improvements in the rights of all of our children, and we think of the enormous hurdles yet to come.

Yes, honourable senators, they are born amongst and raised among us with rights: rights to shelter and good health care; rights to nourishment and protection; rights to societies that respect them and love them; rights to the promise of a better world.

In the aftermath of the tragedy of September 11, our hearts are constantly filled with thoughts about the future of the generations yet to come, but it will not be enough to change the world for children. We must change the world with children. We must listen carefully to simplicity and the honest wisdom of our young people. We must reach out to them and give them every opportunity to speak.

On Saturday, another visitor graced the halls of Regent Park School, now renamed in his honour. A great Canadian of South African origin, the Lion of Africa, Nelson Mandela, and his wife, Graça Machel, were greeted by 13-year-old Carnelle Grabriel and Nurul Mozunder at the school's doors and escorted to their seats.

As always, these two global champions of the rights of the child were feted with children's choirs, and, as Mr. Mandela did yesterday on becoming a citizen of Canada, he smiled and swayed gently as he listened to the garden of beautiful flowers celebrating freedom.

I thought, as I looked from the Museum of Civilization across at the Parliament Buildings, that this is what the dream of Canada is all about. If we listen to our children, that dream will never die.

THE LATE GIL GORLEY

TRIBUTE

Hon. Richard H. Kroft: Honourable senators, the Senate community is once again marking the passage of a valued employee and colleague. Let me express our deepest condolences to the family and friends of Mr. Gil Gorley, whose funeral took place earlier today.

Mr. Gorley died suddenly on the morning of Thursday, November 15. He was 38 years old. He had worked for the Parliamentary Precinct Services Directorate for more than 11 years, first as a messenger and, more recently, in the print shop.

He is remembered by his colleagues as a dedicated worker who strove for quality in all that he did, while displaying a fine, gentle sense of humour. He had a love of music, which he shared as he played guitar in the company of family and friends.

Mr. Gorley is survived by his companion, Josée Ouellette, and their children, Jacob, age eight, and twins Samuel and Myriam, age five.

[*Translation*]

I call upon honourable senators to join with me in extending our most sincere condolences to his family.

[*English*]

Our thoughts and prayers are with them during this most difficult and sad time.

[*Translation*]

ROUTINE PROCEEDINGS

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-38, to amend the Air Canada Public Participation Act.

Bill read first time.

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

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

CANADIAN NATO PARLIAMENTARY ASSOCIATION

FORTY-SEVENTH ANNUAL SESSION, OCTOBER 5-9, 2001— REPORT OF CANADIAN DELEGATION TABLED

Hon. Pierre Claude Nolin: Honourable senators, I have the honour to table the eighth report of the Canadian NATO Parliamentary Association. This is the report of the official delegation representing Canada at the 47th annual session of the NATO Parliamentary Assembly held in Ottawa from October 5 to 9, 2001.

[*English*]

PROGRESS ON BANNING OF ANTI-PERSONNEL LAND MINES

INQUIRY

Hon. Sheila Finestone: Honourable senators, I give notice that on Thursday next, November 22, 2001, I will call the attention of the Senate to the world's current state of progress in relation to the Ottawa convention on the banning of anti-personnel land mines.

QUESTION PERIOD

PRIME MINISTER'S OFFICE

INVITATION TO RIGHT HONOURABLE BRIAN MULRONEY TO INVESTITURE OF NELSON MANDELA AS HONORARY CITIZEN

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, none of us who was there yesterday could not have helped but been moved by the touching ceremony to confer honorary citizenship on Mr. Mandela. I commend the government for having organized it in such a tasteful, respectful and moving way.

On the other hand, there was one glaring omission amongst the guests, who included diplomats, civil servants, MPs, senators and many other Canadians: the presence of former Prime Minister Brian Mulroney, who, in the minds of many of us, should have been there. As I read an article in this morning's *Ottawa Sun*, by Greg Weston, it occurred to me that I should ask why he was not invited. I quote from Mr. Weston's article:

> ...history will record that it was a previous Tory government, including Canada's then external affairs minister, Joe Clark, which did all the heavy diplomatic lifting against South Africa's former racist apartheid policies, the abolition of which occupied most of Mandela's life.

Mr. Clark was in attendance, but Mr. Mulroney was not. I ask the honourable senator to explain why he was not invited.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know whether he was invited. However, I will say that all members on this side would join with honourable senators opposite in saying that the whole approach taken toward apartheid in South Africa was Brian Mulroney's finest hour. It is well recognized and respected from coast to coast that the strong position that he took as the Prime Minister of Canada, in fact, brought about significant changes in South Africa.

Senator Lynch-Staunton: I thank the honourable senator for that recognition which is shared by everyone in this chamber. However, the purpose of my question about Mr. Mulroney's absence is to ensure that it was an oversight and not a deliberate action. I would like the honourable senator to obtain that information for me.

Senator Carstairs: Honourable senators, I will pursue that matter to obtain the requested information for the honourable senator.

[*Translation*]

JUSTICE

CONSTITUTION AMENDMENT, 2001, NEWFOUNDLAND AND LABRADOR—EFFECT ON BORDER WITH QUEBEC

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. It concerns the motion tabled in this house and appearing on the Order Paper intended to change the name of the province of Newfoundland. In a press release from the office of the Minister of Industry on October 26, 2001, we read:

> The resolution has nothing to do with borders, and thus, the proposed amendment will have no impact on the boundary between Newfoundland and Quebec.

Does Senator Carstairs acknowledge that the mere fact of adding the word "Labrador" to the schedule of the Newfoundland Act means the federal government is recognizing once again, under section 43 of the Constitution Act, 1982, the legality of the boundary line established in 1927 by the judicial committee of the Privy Council in London, although Quebec has never recognized it?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am aware of the fact that the border of 1927 has not been recognized by the Province of Quebec. In fact, I understand they occasionally pass resolutions to that effect in the National Assembly.

Senator Nolin: That occurs every year.

Senator Carstairs: Honourable senators, the border has been in existence since 1927, and it was recognized in 1949. This particular document does not in any way change the border as it is currently drawn.

[*Translation*]

Senator Nolin: Honourable senators, on April 29, 1999, the Newfoundland House of Assembly adopted a resolution asking the federal government to amend the Newfoundland Act to change the name of the province. In a statement made that same day before the members of that legislature, the former Premier of that province, the Honourable Brian Tobin, said:

> The adoption of this amendment by the House of Commons and the Senate will complete the historic work undertaken by the Privy Council in 1927, in a decision that defined Labrador.

Seven months later, on December 6, 1999, Mr. Tobin reiterated that position by saying that the constitutional amendment to be adopted by the two Houses of the Parliament of Canada would:

> ...simply legalize what has been the border of this province, as confirmed by the 1927 decision of the British Privy Council.

In this context, how can the Honourable Senator Carstairs reconcile the current position of the federal government on this issue with the statements made by the former Premier of Newfoundland, who is now the Minister of Industry in her government?

[*English*]

Senator Carstairs: Honourable senators, we must deal with not only the 1927 decision of the Privy Council, but also with the Terms of Union, which permitted the entry of Newfoundland into Confederation in 1949. The reality is that the current resolution before the Senate does not change the border between Labrador and the province of Quebec.

[*Translation*]

Senator Nolin: Honourable senators, a briefing note attached to the notice of motion tabled by the minister on October 25 explains the objective of the constitutional amendment proposed by the government to change the name of the province of Newfoundland. In the second paragraph of that note, it is indicated that, prior to the tabling of the motion:

...the federal government consulted the governments of Newfoundland and Quebec.

Could the minister table the relevant documents showing that the two provinces were consulted prior to the tabling of that motion, to confirm that the motion will not have any impact on the border drawn between Newfoundland and Quebec?

[*English*]

Senator Carstairs: Honourable senators, I can certainly make inquiries as to what those consultations included. I do not anticipate that there exists a document, per se, which I could table, but I will bring back every bit of information with respect to the consultation process that I can find.

•(1430)

NATIONAL DEFENCE

AFGHANISTAN—PROPOSAL TO SEND TROOPS

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. It is with respect to Afghanistan and our sending 1,000 ground troops there. We heard that the troops had been put on 24-hour stand-by. Now, they are not on 24-hour stand-by.

The Prime Minister is quoted as saying, "We do not want to have a big fight there. We want to bring peace and happiness as much as possible." Did the Prime Minister really say that?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know about the latter part of the statement. It has been very clear from the beginning that the purpose of the PPCLI, the Princess Patricia's Canadian Light Infantry, would be to do two things: provide stability and provide humanitarian aid. They have not been on 24-hour stand-by, but on 48-hour stand-by. A small reconnaissance team has apparently been on 24-hour stand-by, but the bulk of the troops have been on 48-hour stand-by.

Quite frankly, the government is holding back, as are troops from Britain and France. We are holding back until we know exactly their mandate, to whom they would be reporting and what exactly they would do once on the ground.

It is important for senators to understand that discussions are taking place today in Washington with all the relevant players. Our Minister of Defence is there. It is hoped that, after these discussions, we will have a better understanding as to whether Canada will send those troops to provide the stability and humanitarian aid.

Senator Stratton: Honourable senators, as we all know, there is a big fight going on over there. The last I heard, we have three Canadian warships now in the Arabian Sea.

I can understand the decision to hold back troops. I want to ensure that once they are there, if fighting breaks out, for whatever reason, that we are not going to turn tail and run home. If the decision is made that our troops are going there, will we hightail it for home if a big fight breaks out? What is the tolerance for body bags? We have to realize and recognize that we cannot merely talk nice. We also have to be there and be tough, which I know our troops would be. That is unquestionable, but I question the determination of the government to stand and fight, given the words of the Prime Minister.

Senator Carstairs: Honourable senators, the honourable senator queries whether we will defend ourselves in an adequate way. Of course we will. The Minister of Defence has been very clear. He wants the troops that are sent to be the appropriate troops. He wants to ensure that those troops reflect appropriately the actions the government wants them to take. I state again that the principle purposes of sending those troops would be for security and humanitarian efforts.

Every time we send troops abroad, primarily on peace missions, we know that our troops are in some danger. We never know when flare-ups will occur. The troops realize that, as well. Therefore, it is incumbent upon us to be appropriately equipped. When our troops go into these areas, we must ensure that they are able to adequately defend themselves.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): As a matter of public policy, what is the government's view of the level of tolerance for Canadian troops incurring casualties in an area that is in open armed conflict? One must consider the level of tolerance during the peacekeeping intervention in Somalia, where the leader of the current coalition left after some 18 American soldiers became casualties. One must consider that General Roméo Dallaire was completely abandoned by the Belgian troops after that country sustained 10 fatal casualties. What is the policy of the Government of Canada as to the level of tolerance for fatal casualties should we go to Afghanistan?

Senator Carstairs: Honourable senators, plans are not made on the basis of levels of tolerance. Plans are made on the basis of whether the troops that we send there can do effectively the job we have assigned them. Clearly, the expectation would be that they would not be in areas of heavy fighting and interaction, because it would be very difficult to provide stability and humanitarian aid if that were the case.

I can assure the honourable senator that the troops will be adequately equipped. Decisions will be made, as they are being made in Washington today, to ensure that appropriate troops are sent with appropriate equipment, and appropriate leadership and determination accompanies such an assignment.

Senator Kinsella: Honourable senators, I should like to ask the minister a supplementary question. Should Canadian troops, if in Afghanistan, capture a member of the Taliban leadership or a member of al-Qaeda, is it the policy or intent of the Government of Canada that such an individual, or group of individuals, would be brought back to Canada for trial, or is it the policy that such captives would be turned over to the Americans? The President of the United States has just signed a provision to the effect that the American court martial system would be the judicial forum within which international terrorism will be adjudicated. What is the government of Canada's position should we capture a terrorist in Afghanistan?

Senator Carstairs: Honourable senators, we would ensure that all international conventions to which we are a signatory are respected. To my knowledge, we have signed all conventions with respect to the capture and treatment of prisoners. We would adhere absolutely to the international conventions that we have signed in this regard.

As to the American decision to use a military tribunal, at this point Canada knows very little about it. Canada has certainly not indicated its approval.

INTERNATIONAL TRADE

UNITED STATES—RENEWAL OF SOFTWOOD LUMBER AGREEMENT

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate, and it relates to a question I asked before the recess in regard to the softwood lumber issue. That issue is adversely and negatively affecting the region that I represent, and the province from which I come. We had more mill closures during the week of the recess. I believe that there were 400 people laid off at one of the major mills in British Columbia, which will most likely never open again.

Can the leader give the Senate and British Columbians a brief update as to where we stand on the softwood lumber issue with the United States?

Hon. Sharon Carstairs (Leader of the Government): As honourable senators know, I am sure, there are ongoing meetings between the Government of Canada and the United States. Also, there have been some meetings within British Columbia in which the B.C. government has decided to engage itself. They have assured the government that they remain committed to pursuing a durable solution. It appears that both the British Columbia government and the Canadian government are moving forward together on this matter.

The Canadian government continues to work with the provinces and territories in their discussions with the United States, and we are committed to finding a solution.

•(1440)

There was some good news out of the WTO meetings last weekend with respect to a greater collegiality, if you will, on dumping. It is hoped that this matter will be resolved, for the sake of lumber operations in British Columbia, sooner rather than later.

FINANCE

DEVALUATION OF DOLLAR

Hon. Gerry St. Germain: Honourable senators, as the minister knows, one of my main concerns — and this is a concern for many British Columbians and other Canadians as well — is the devaluation of the Canadian dollar. Up to now, the responses I have received from the minister on this question include a flippant reference to a flat tax.

As of last week, several editorials addressed the adverse effect of the sliding Canadian dollar on various sectors such as softwood lumber. I go back to my original question. The Prime Minister has stated that a low dollar is a good dollar. One editorial asked why we would not drop the dollar to 50 cents if a low dollar is a good dollar? That just does not make sense. A statement like that is senseless.

In speaking privately with a lot of the huge operators, one of the biggest stumbling blocks in dealing with the softwood lumber industry is the low dollar. A lot of the political posturing by the Americans is totally unfair, but we are allowing the Canadian dollar to slide in order to keep us competitive. That is the belief of many who are closer to the issue than me. The government must do something about the value of the dollar. What are they prepared to do in that regard?

Hon. Sharon Carstairs (Leader of the Government): As honourable senators know, it has been the policy of this government and of previous governments to let the Canadian dollar float along with other international currencies. That is the reality. We are an exporting country. We usually benefit from a dollar that is valued somewhat lower than the American dollar. The Prime Minister has indicated as much in the past. He has also indicated that he would prefer to see the dollar higher than it was yesterday when it closed at 62.95 cents. Most of us would like to see the dollar higher than that. However, at the present time, it is a floating currency.

Senator St. Germain: If it is floating, then perhaps we should be considering the suggestion backed by many CEOs that our dollar be pegged to the U.S. dollar. We could have a North American currency, as opposed to a currency that floats always downward. That is not necessarily my suggestion. It is backed by a multitude of CEOs in this country. What is the government's reaction to that proposition?

Senator Carstairs: I am glad the honourable senator has dissociated himself from that policy. One survey has quoted some people suggesting that route. The Minister of Finance has clearly stated that we will not go that route. I support the Minister of Finance, obviously because of cabinet solidarity, but I would do so anyway because I do not believe in a common currency. If one looks at the effects of the euro, the common currency in Europe, that move has created a disincentive, not an incentive, for that currency.

FOREIGN AFFAIRS

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY—
SOCIAL DEVELOPMENT AID

Hon. Douglas Roche: Honourable senators, yesterday the Prime Minister said the forthcoming budget will commit more money to official development assistance. Canada now sits at number 17 on the list of 22 donor countries of the Organization for Economic Co-operation and Development, the OECD. At 0.26 per cent of GDP, we are not only far below the international target of 0.7 per cent, but we are at the lowest level in Canada since 1965.

It is impossible to make up that lost ground in one budget, but can the government ensure that the quantitative increase will be directed to quality improvement and to the four key areas of social development: health and nutrition, basic education, HIV/AIDS, and child protection? Will the minister ensure that this question and the answers she will give will be sent to the CIDA authorities?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. The Prime Minister has made it very clear that there will be an increase. We must wait for the budget to see exactly what that increase will be.

The four areas that the senator has identified have become the four challenge areas for CIDA. I anticipate, since I see no policy change on the horizon, that that will continue to be the thrust of our spending. As to the latter question, the minister will of course receive a copy of this question.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table two delayed answers, the first to the question raised by Senator Spivak on October 18, 2001, concerning the safety of livestock antibiotics, and the second to the question raised by Senator Meighen on October 24, 2001, concerning the Order in Council and the benefits available to personnel taking part in Operation Appollo.

HEALTH

SAFETY OF LIFESTOCK ANTIBIOTICS

(Response to question raised by Hon. Mira Spivak on October 18, 2001)

The issue raised in the study published in the New England Journal of Medicine relates to the use of antibiotics in animals and their impact on antibiotic resistance in humans.

Antibiotic resistance in humans represents a significant public health threat. This resistance stems largely from misuse of antibiotics in human medicine and clustering of people in institutions such as hospitals and day care centers.

It is recognized, however, that the use of antibiotics in animals can contribute to antibiotic resistance in humans. For this reason, Health Canada is developing strategies to track antibiotic resistance and antibiotic use to control the spread of resistant bacteria from animals to humans. The Department has strengthened research and surveillance activities to support the development of science-based policy. An external advisory committee has been established to assist in this policy development. International research and policy initiatives will be considered in developing strategies to control the spread of antibiotic resistance.

Protecting the health and safety of Canadians is of paramount importance and all necessary action will be taken to control the spread of antibiotic resistance.

NATIONAL DEFENCE

OPERATION APPOLLO—ORDER IN COUNCIL PLACING
TROOPS ON ACTIVE SERVICE

(Response to question raised by Hon. Michael A. Meighen on October 24, 2001)

Order in Council P.C. 1989-583 placed all members of the CF Regular Force and Reserve Force on active service when outside of Canada. This Order in Council is still in effect today. Based on legal advice, it was decided to discontinue the practice of issuing operation specific orders in council because these would be redundant with the before mentioned Order in Council.

The Special Duty Area and contingent benefits paid to CF personnel while on Operation Apollo are being assessed. As of now, all CF personnel deployed on Operation Apollo will receive added compensation. If the CF assessment of benefits due its members is higher than their current rate of compensation, the CF personnel will receive this higher rate retroactively.

[*English*]

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Before calling Orders of the Day, I should like to introduce two pages visiting with us this week from the House of Commons.

On my left is Dirk Druet of Charlottetown, Prince Edward Island. He is enrolled in the Faculty of Public Affairs and Management at Carleton University, majoring in Political Science. Welcome.

On my right is Aija White of Maple Ridge, British Columbia. She is studying in the Faculty of Arts at the University of Ottawa. Welcome.

ORDERS OF THE DAY

MISCELLANEOUS STATUTE LAW AMENDMENT BILL, 2001

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Hervieux-Payette, P.C., for the second reading of Bill C-40, to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed, or otherwise ceased to have effect.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I was able to use the break of last week to complete my reading of Bill C-40. I did not find any more errors than the one I found in my reading of the first part.

One would expect, honourable senators, that a bill designed to correct anomalies and inconsistencies in statutes would not itself contain an error or anomaly. Therefore, I would hope the committee to which this bill is referred will make the necessary observation on the error and have it corrected so that the bill might go forward.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[*Translation*]

NUNAVUT WATERS AND NUNAVUT SURFACE RIGHTS TRIBUNAL BILL

NOTICE OF MOTION TO DECLARE BILL NULL AND VOID—ORDER STANDS

On the Order:

> Second reading of Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, it is my duty to draw the attention of the Senate to certain print errors in relation to Bill C-33. The bill was adopted by the House of Commons on Friday November 2, 2001. On Monday November 5, a temporary scroll was received from the House of Commons and a first printing of the bill was made. On Tuesday November 6, the bill was read for the first time in the Senate.

[*English*]

On Wednesday November 7, at 6:00 p.m., the Commons journals branch informed the deputy clerk's office of an error. The parchment that had been sent did not include three amendments made by the House of Commons Aboriginal Affairs Committee.

•(1450)

On Thursday, November 8, the bill was reprinted, and a new parchment was sent to the Senate. Copies did not arrive at the Senate chamber in time for distribution before second reading debate was to begin, so second reading was then held. The item was stood.

On Tuesday, November 13, a further error was discovered in the parchment copy, on page 71. One of three committee amendments had been repeated incorrectly in clause 171.1. Also, "Nunavut" had been incorrectly spelled at the top of each page, in English.

On Wednesday, November 14, a new parchment was received — a third — and the bill was reprinted. Honourable senators will find on their desks two copies of the bill, which is Bill C-33, a copy that contains the error and a copy marked "reprint" — which is the copy with all the corrections. The second impression was taken away. The first one was not taken away because officially it was still the copy that was presented here in the Senate.

Senator Kelleher: Are you choking on your words?

Senator Robichaud: No, but I find it a little embarrassing that we should have to go through this, even though the error was not made in this house. Nevertheless, we will proceed.

I want to bring this situation to a conclusion so that we may debate Bill C-33.

[*Translation*]

Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*i*), I move:

> That notwithstanding rule 63(1), the proceedings on Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts, which took place on Tuesday November 6, 2001, be declared null and void.

[*English*]

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

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I am not inclined to grant leave because, unlike a simple parchment error that might be the case in Bill C-40 — and we will attend upon the examination of Bill C-40, which we have referred to the Standing Senate Committee on Legal and Constitutional Affairs — the bill before us right now is the only bill that we have apprehended. After communications between the Table in the other place and our Table, Senator Robichaud has pointed out that we now have three parchments from the House of Commons. The one before us is the bill that was given first reading in this house. We have the problem of how to dispose of that bill.

Honourable senators, in my opinion it would be wise to take into consideration the information that has been provided to us, but quite frankly this is more than a parchment error. There were substantive amendments made to the bill. We are not talking about a typographical error here.

It seems to me that the solution is for us to dispose of the bill before us by not proceeding any further and by sending a message to the other place informing them that we will not continue to proceed on the bill that came with the first parchment. If they wish to send us a proper message, it will be up to them. We do not know what they have done. They have given us three messages saying that they have done three different things.

It is all well and good for people to say there were errors, but I believe it is far more than errors. In terms of the proper proceedings of a bicameral Parliament, we have to know exactly what the bill is that has been adopted in the other place to which our consent is being sought.

It seems to me that we should dispose of the matter in front of us, that we should send a message to the other place telling them we have disposed of the original bill that was sent to us and leave it to them to send us another one if they wish. We do not know what they have done. They have told us three different things. It seems to me that we have to send them a message to ask them to clarify and send us a proper parchment with a properly printed bill.

[*Translation*]

Senator Robichaud: Honourable senators, I do not know if I am in order. I believe the house did not give its consent for the adoption of the motion I tabled. This motion is consistent with what Senator Kinsella proposes, that is to dispose of the first copy that we were sent, which did not respect faithfully the bill that was adopted in the House of Commons.

The clerks assure me that the copy of Bill C-33 I have in hand, marked "Reprint," respects the bill that was adopted by the House of Commons on November 2, 2001.

[*English*]

Senator Kinsella: Honourable senators, the difficulty I have with that is that we have been assured by three documents attesting to what was passed in the other place, all signed by officers of the other place, and we do not know exactly what the bill is that they have passed.

In this confusion, I think we would be acting in good faith by simply disposing of the bill at second reading, because we have learned that is not the bill that was passed in the House of Commons. We need to send a message to the other place to inform them that they have sent us three different parchments, three different bills, each one being attested to as being the bill that was sent over to us inviting us to give our consent to the bill.

•(1500)

This matter can be addressed quickly by sending a message to the House of Commons, asking them to send us a copy of the bill that was passed there, and to send it to us in the proper form. Otherwise, we will have three different attestations of three different versions of the bill.

[*Translation*]

Senator Robichaud: Honourable senators, I believe that the message from the clerk and not a message from the Senate was received from the other side. We were not pleased at receiving copies that were not true copies of what had been passed in the House. This is not an error on the part of the House of Commons. It passed a bill. When it was reprinted, as the documents were being transferred, the true copy of the bill passed in the House of Commons was not reprinted.

I understand the comments of Senator Kinsella. This is an administrative error. The message has already been delivered.

[*English*]

The Hon. the Speaker: Let me try to reflect back to the house what I understand to be before us. Senator Robichaud has asked for leave to present a motion to declare the proceeding on first reading of Bill C-33 null and void, which would leave our Order Paper clear to receive a corrected Bill C-33, and the process of first, second and third readings would proceed in the normal course. The bill before us that has received first reading would be declared null and void.

In response to the request to so proceed, Senator Kinsella has suggested that leave would be granted. However, he has provided an understanding of the steps that would follow that would involve a message being sent from the Senate to the House of Commons requesting that the message in regard to Bill C-33 be sent as if it were the first time.

The difference between what Senator Robichaud is asking leave for and what Senator Kinsella is agreeing to give leave for involves the issue of a message being sent to the House of Commons, which, as I understand it, would require a resolution of this house, which we could deal with expeditiously, and a message could be sent in regard to Bill C-33. I am not sure of the exact wording.

I believe leave is granted to proceed with Senator Robichaud's motion; however, it is not clear what will follow. Perhaps I could ask him for a comment as to whether he understands the process as Senator Kinsella has described it and whether he is in agreement with that.

[*Translation*]

Senator Robichaud: Honourable senators, what sort of message would we send the House of Commons? The Chair has said we should send it in the form of a motion. I contend that the error was not committed by the House of Commons. It passed a bill with amendments. The transfer of documents did not faithfully respect the bill passed by the House of Commons. I believe it would serve no purpose to send a message to the House of Commons, because the error did not originate in the other place, but elsewhere. The transfer of documents is a purely administrative matter.

This is why I have difficulty understanding the nature of the message we could send the House of Commons. The Clerk of the Senate and his team have already contacted the administration of the House of Commons to make sure such errors are not repeated and that the final copy marked "Reprint" is a faithful one. The Leader of the Opposition has pointed out to me that he does not have this copy at the moment. I have been assured there is a second copy. The first, official copy has not been withdrawn.

The motion I am proposing would withdraw the copy that was not the true one and did not contain the amendments. It was the first copy that was not marked "Reprint" at the top. The second was distributed to all honourable senators and contains no error.

According to my motion, we would cancel all proceedings on the first copy. We could reintroduce Bill C-33. We could initiate debate on a true copy reflecting the bill passed by the House of Commons.

[*English*]

Hon. John Lynch-Staunton (Leader of the Opposition): This is not the first time this has happened, honourable senators. I believe His Honour will find an opinion, if not a ruling, by his predecessor regarding these so-called administrative errors. Senator Molgat, as I recall, seriously reprimanded whoever was responsible for our receiving the wrong documentation.

When that happened before, we graciously accepted to do the corrections or substitutions ourselves. We did so with a warning, that if such a situation were to happen again the matter should be brought directly to the House of Commons that they made a mistake in what they sent us. The only way that that can be impressed upon them is for us to alert them that they made a mistake and to reintroduce Bill C-33 in its correct form through a new message from the House of Commons. It is not for us, once again, to correct the errors made by administration elsewhere.

I commend our Table officers for having carefully and meticulously, as they do in looking at legislation, picked out these mistakes, not once, but twice. Who is to tell us now that the third version to be tabled is the correct version?

The House of Commons should be entertained with this entire matter and asked to begin again by whatever motion or resolution this house feels would be required for them to do so.

The Hon. the Speaker: Do any other senators wish to comment on this matter of procedure with respect to the bill?

I should like to indicate that, as your presiding officer, I must be very careful in how I proceed. Senator Robichaud, as I understand it, has suggested that we have everything we need to proceed with first reading again. Senators Kinsella and Lynch-Staunton have indicated that that is not the case.

If we were to proceed with this motion, I fully anticipate that, if I were to stand and read Bill C-33 a first time again, an objection would be made that proceeding in such a fashion would not be in order. In anticipation of that, unless some senator rises to give leave to avoid that issue, I shall take this matter under consideration to determine whether Senator Robichaud's position is correct. That is, to assert that no other step is required if a bill is declared null and void at first reading stage in order to proceed again with first reading of the same bill, that bill having been corrected in terms of the description of Bill C-33 as it has been set before us.

•(1510)

Unless honourable senators wish to proceed now, as suggested by the Deputy Leader of the Opposition, to withdraw this bill and send a message back to the House, which would also require leave if we were to do so today, then I think I should take the matter under consideration and try to come back tomorrow with a ruling on whether Senator Robichaud is correct that nothing more is required from the House and that the reprinted version of the bill is all we need to proceed with first reading again.

I do not remember the ruling to which Senator Lynch-Staunton referred well enough to give a ruling from the Chair at this moment. I would have to review that ruling. Although I have some recollection of it, my recollection is not good enough to feel confident in making a decision about the correctness or incorrectness of the position put forward.

Although I have said that I have heard enough on the matter of order, another senator has risen. If Senator Cools will take her seat for a moment, I shall review what has transpired in order that we are all clear about it.

A matter of order has come before this chamber. My interpretation of the issue before us is that it is a matter of order with regard to whether it is correct to proceed in a certain way. I have invited honourable senators to comment on the matter of order. I was about to take my chair and proceed with the Order Paper, having said that I would return with a ruling at the earliest possible time.

An honourable senator has risen, wishing to participate in the debate on the matter of order. I believe that we need leave to reopen debate on the order. It may well be that senators have useful comments to make.

Is leave granted to hear further submissions?

Senator Kinsella: I would like to suggest, for the consideration of my colleagues, that perhaps the matter should be stood. I am not sure that a point of order was raised.

Hon. Anne C. Cools: No point of order was raised.

Senator Kinsella: If the matter were stood at this time, discussions could be held through the usual channels and perhaps a solution could be worked out between now and tomorrow.

Senator Cools: Honourable senators, perhaps I was inattentive, but I did not hear a point of order raised. I heard permission for leave being requested. His Honour said he wanted to take the matter under advisement and return with a ruling. To my memory, no ruling was requested, because no point of order was raised. Therefore, it is not open to His Honour to interrupt the debate and say that he will take the matter under advisement. Senators as a whole must simply resolve now how the debate will continue. As no point of order has been raised, no ruling from His Honour is required. The matter before us is whether a senator should be given leave.

Intrinsic to the whole matter is that the Senate is being asked to overturn a reading of a bill, which is no simple matter. Under the law of Parliament, bills are given three readings and move forward in a particular sequence. Each of those readings is an order of the Senate. Therefore, it seems to me that the proper question that the Senate should be addressing, rather than a ruling, which was not requested, is how the Senate overturns the reading of a bill. It is not a simple matter.

Senator Robichaud: Honourable senators, I move that we stand this order.

Order stands.

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Corbin, seconded by the Honourable Senator Day, for the second reading of Bill C-6, to amend the International Boundary Waters Treaty Act.

Hon. Lowell Murray: Honourable senators, the sponsor of this bill, Senator Corbin, opened debate on second reading with his customary thoroughness and attention to detail. I thank him for that. We are also indebted to Senator Carney for having drawn our attention to certain provisions of this bill that should cause us serious concern on at least two grounds: first, our duty to protect the historic prerogatives of Parliament where legislation is concerned; and second, our duty to preserve and improve upon our environmental heritage.

These two obligations are among the highest that Canadian parliamentarians owe to future generations, and I believe honourable senators take them seriously. It is for that reason that I suggest, in all earnestness, that we should give very careful consideration to substantive amendments to this bill when it gets to committee.

Let me say a word of historical background. In 1909, the Boundary Waters Treaty was concluded between Canada and the United States, Great Britain signing for Canada. Under that treaty, both parties are required to protect the natural flows or levels of the waters that our two countries share. The treaty created the International Joint Commission, which, for the many generations since, has been a model of bi-national cooperation.

In a nutshell, no work that might affect the levels or flows of water on either side of the border may be undertaken, except with the permission of the Government of the United States or the Government of Canada, acting within our respective spheres of jurisdiction, and the permission of the International Joint Commission.

To implement that 1909 treaty, in 1911 our predecessors in Parliament passed the International Boundary Waters Treaty Act. It is this act that Bill C-6 proposes to amend. Bill C-6 addresses two issues. The first is the process for granting or denying permission on the Canadian side of the border for a work undertaking obstruction, diversion, et cetera, that might affect the flows or levels of water.

•(1520)

Second, Bill C-6 addresses the question of bulk water removals from boundary waters, removals that Bill C-6 purports to prohibit.

Honourable senators, let me say a word about both of these issues. The government is at some pains to point out that with regard to the permissions for work, undertaking obstruction, diversion, et cetera, Bill C-6 merely formalizes a process now 90 years old. Under that process, if one wants to construct such a work on this side of the border respecting boundary waters, one must obtain whatever municipal or provincial permissions may be applicable. Then one must obtain any permission that may be necessary under other federal statutes, such as the Canadian Environmental Assessment Act or the Navigable Waters Protections Act.

One must then go to the federal government under this statute, and the federal government decides whether to send your proposal to the International Joint Commission. The IJC may then deny or, if it grants permission, may, and frequently does, impose conditions to its permission.

At that point, the federal government has a second opportunity to decide whether the work will go forward. The federal government grants its permission informally under the current situation.

As the government points out, the only change brought about by Bill C-6 would be that the final permission of the Canadian federal government would come by way of a licence issued by the government. Is this an improvement? The government thinks it is, and perhaps it is, although I think we should wait and see.

It would be possible under this bill, if passed, to have exceptions to the need to obtain a licence codified in regulations by fiat of the Governor in Council. As I say, this would be done by the cabinet under subclause 11(1).

The draft regulations were tabled some months ago at the Commons committee, but there is no mention of any exceptions to the licensing provision. That being the case, one wonders what exceptions might come in under this or some future government. We do not know.

It is also the case that by regulation, the cabinet will decide what constitutes a use, obstruction, diversion, or work. However, there is nothing in the draft regulations that were tabled some months ago to indicate how the government would define these terms. It is at least open to question whether this formalization is an improvement upon the present process.

The government has also gone to some pains to point out that this licensing regime does not apply to bulk water removals from boundary waters. The government points out that these are prohibited under subclause 13(1), and as spokespersons for the government never tire of saying, "the prohibition is a prohibition."

Honourable senators, this is true, but it is irrelevant. It is irrelevant because we read a few sentences later that the prohibition in subclause 13(1) "does not apply in respect of the exceptions specified in the regulations."

What exceptions will there be to this so-called prohibition? That is entirely in the hands of this and a future cabinet to decide by regulation.

The draft regulations tabled a few months ago specify as exceptions water used as ballast or for manufactured products or for humanitarian purposes, such as fire-fighting in the short term, but there it stops. What other exceptions may be brought in to the so-called prohibition? Who knows? No one knows. Those exceptions would be whatever this or some future cabinet decides.

This so-called prohibition, honourable senators, is the government's response to Canadian concerns about the export of our waters, at least in so far as the Great Lakes, Hudson's Bay and the St. John and St. Croix Rivers in New Brunswick are concerned.

Honourable senators, it will surely be clear to you that a prohibition qualified by the unfettered authority of the cabinet to make exceptions is not much of a prohibition at all. It must be clear to honourable senators that the unfettered authority to make exceptions by regulation would allow the government, at some future date, to negate the entire intent of this act.

With regard to possible exports of our water, I understand, and I think most of us accept the government's position, that this is an environmental issue and not a trade issue. As government spokespeople say, the place to protect our waters is "at the basin, not at the border." That it is an environmental issue. Canada's position is that we protect our waters as a natural state, that water in its natural state is not a tradable good or a commercial good and that we have full sovereignty over our waters.

The government has refused demands for an export ban on our waters for what seems to me to be the good and sufficient reason that export bans can only apply to tradable goods. If we were to bring in an export ban, it would be to acknowledge what we refuse to accept, namely, that water in its natural state is a tradable good.

Senator Carney is concerned, and I think she is right, that some exception to this prohibition brought in at some future date could, by bringing some boundary waters into commerce, place our waters under the ambit of NAFTA or other trade agreements as a tradable good. The Senate must foreclose that possibility when this bill goes to committee.

I want to remind honourable senators that the scope of the regulation-making authority in general in this bill is extraordinary. Indeed, I would say that it is excessive. The Governor in Council, by regulation, can, for example, specify what constitutes a use, obstruction, diversion or work for the purposes of the act. The Governor in Council will be able to define for the purposes of this act any word or expression used in clause 11 that is not defined in the act. The Governor in Council will be able to specify exceptions to the licence requirements and to the prohibition. The Governor in Council will be able to prescribe uses, obstructions, diversions and works to which a licence may not be issued. The Governor in Council will be able to list, and I suppose delist, the water basins to which the prohibition applies.

This is very broad and, I say, excessive regulation-making authority to give to the government, especially on a matter of this kind. This is a parliamentary issue to which we should pay serious attention.

I should like to read a paragraph written by the late Elmer Driedger, who was for a long-time Deputy Minister of Justice in this country and who created the legislative section of the Department of Justice in 1944. He wrote a book entitled *The Composition of Legislation, Legislative Forms and Precedents*. On the question of definitions, where we would give unlimited authority to the Governor in Council under this bill, Mr. Driedger states at page 200:

> Authority to define words and expressions used in an Act may be objected to in Parliament if the authority can be used to enlarge or restrict the scope of the Act.

•(1530)

Honourable senators, in a number of very important particulars, the regulation-making authority given to the government with regard to definitions certainly could be used to enlarge or restrict the scope of the act.

Mr. Driedger then states:

> If definitions are needed, it is generally better to have them in the Act. There are, however, situations where the need for flexibility may properly prevail.

He then goes on to give several examples that go nowhere near the broad power that will be given to the Governor in Council under this bill to define words, phrases and sentences in the act in whatever way the Governor in Council wants. It is obvious to me that one of the things we have to consider is to severely restrict the regulation-making authority that is proposed in this act and to amend the bill accordingly to put definitions right into the bill.

Recently, the Standing Joint Committee of the Senate and the House of Commons on the Scrutiny of Regulations reminded us that the Australian Parliament has taken serious objection to exactly this kind of regulation-making authority. I will read to honourable senators the words quoted by our committee from the Australian committee, which said that it is "a breach of parliamentary propriety if matters which should be subject to all the safeguards of the parliamentary passage of a bill are included in a legislative instrument."

Honourable senators, I simply conclude by saying that the regulation-making authority in this bill would be unacceptable from a parliamentary point of view. I believe it would also be irresponsible from an environmental point of view. I call upon the committee, when this bill goes to committee, to undertake a study of it in such a way as to make serious amendments to correct these serious deficiencies in the bill.

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

Hon. Eymard G. Corbin: Honourable senators —

[*Translation*]

The Hon. the Speaker *pro tempore*: Honourable senators, I must advise the Senate that if Senator Corbin speaks now, it will have the effect of closing debate on second reading.

[*English*]

Senator Corbin: At the outset, I wish to thank the Honourable Senators Carney, Spivak, Murray, Nolin, as well as Senator Kinsella, who put questions to me after my second reading introduction. The debate has been a good one and illustrates the fact that parliamentarians are taking their task very seriously.

[*Translation*]

I share, to some extent, the concerns raised by honourable senators during the debate. I should like to reassure them however, by stating that they may be reading more into the bill before us today than it actually contains. We will have the opportunity, as Senator Murray wished incidentally, to examine in more detail these questions and concerns during the committee study.

I am able at this time to answer some of the questions raised by Senators Carney and Spivak, among others.

[*English*]

When I use the word "we," I mean that I speak for the government in my capacity as the sponsor of this bill. We agree with Senator Carney that water in its natural state is not a good and not subject to trade obligations, which is the exact approach adopted by Bill C-6. Canada's position on bulk water removal is clear — it is to prohibit the bulk removal of water from all major drainage basins in Canada.

The exceptions are very limited. Senator Murray alluded to the regulations wherein the exceptions are enumerated. They do not go beyond what has been the practice over the last 92 years in terms of the way the bill has been administered. They are basically short-term safety and humanitarian uses, and for water contained in manufactured products produced in the basin, not for uses outside the basin.

Senator Carney suggested that Bill C-6 would permit bulk water exports where no such permission now exists. The senator is incorrect. The licensing provisions apply to bulk water diversions within basins and are separate from the prohibition provision which applies to diversions outside basins. The licensing regime — and I may be repeating myself — simply formalizes the existing approval process of the Government of Canada for projects under the Boundary Waters Treaty. As a result, the licensing-approval process will confer no new powers on the Government of Canada.

I will leave other matters for the committee to deal with during its examination of the bill. That is not to say that they are not important, but they do not preoccupy honourable senators at this time. I can assure honourable senators who will be attending those committee hearings that they will be provided a well-fleshed-out briefing book that will contain reactions to some of the comments we have heard in the Senate over the past few weeks.

Senator Lynch-Staunton: Probably watered down.

Senator Corbin: No, it will not be watered down. I can assure honourable senators of that.

It would be best for me to limit myself to those comments today. I am prepared to respond to specific points. However, in view of the way we do our business in the Senate, and I think we do it well, it would be preferable to examine those matters in great detail at the committee stage, if there is such a wish.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, Senator Corbin claims that the government is not giving itself any additional powers in this bill. Yet clause 21, though I do not wish to contradict him, contains what I see as excessive powers. For example, the government may make regulations specifying what constitutes a use, obstruction, diversion or work for the purposes of the act. In addition, as Senator Murray has just pointed out, the government is going to be able to define the meaning of words.

•(1540)

In our legal system, words are defined by legislation, a principle that is recognized and sacred. Here the government is giving itself the power to define them by ways other than legislative ones. Under the late Justice Pigeon of the Supreme Court, I trained for years on how to address these questions. I must admit that we went very far with that. I could give a number of examples. Good heavens, we have had three or four examples this year alone.

I do not want to make a speech, and am not entitled to. I could, for instance, point out that the Immigration Act contained what I would consider excessive regulatory powers under common law, a familiar expression in legal language. The Terrorism Act was also no slouch in this respect, believe me, and that also goes for the bill we are currently examining.

If the people who are so obsessed by the "rule of law," such as Senators Joyal and Grafstein, read this bill carefully, they would be conscience-stricken if it is passed as it is. Despite your saying that it is not giving the government any additional powers, it does indeed; in fact, it does so in what to my mind is a virtually unprecedented way.

Senator Corbin: The honourable senator could be right, but I have a totally different impression. Again, for all practical and administrative purposes, the bill does not include anything new. It merely formalizes practices, procedures and interpretations of certain terms that have been there for 92 years, but that were never specifically defined. The definition does not seek to add new elements. In fact, that would not be possible, because we would probably be *ultra vires*, given the content of the treaty. Senator Beaudoin knows more about this issue than I do. I understand your concerns. I asked many questions to the officials who briefed me on this bill. I am just as concerned as he is by a desire to protect our environment and our resources, not just for us, but for future generations.

I reread this bill several times. I was asked to sponsor it over two years ago. I had the opportunity to closely examine the notes that were sent to me following my requests for information. I am not the absolute authority on this, but I can assure you that you read more into this bill than there actually is.

Senator Murray raised a valid point when he referred to Mr. Driedger's comments. This type of issue concerns me at times. I support the traditional and classical principle to the effect that we should not take anything away from the prerogatives of the two Houses of Parliament, or erode them. I have always endorsed that principle and I still do.

Following a proper review in committee, if it became clear that through the regulations cabinet is giving itself powers that normally belong to Parliament, I would probably be among the first ones to support Senator Bolduc. I do not have that concern after reading the documents and the answers to my questions. We could take a more in-depth look at this issue in committee. I would have no objection to doing so.

Senator Bolduc: I realize that the government or the executive branch must have some leeway. One could legally claim that the government does not give itself powers that are not delegated to it by Parliament. For my part, I believe Parliament is giving too many powers to the government. This is what I see in clause 21, among others. These powers are such that they give a lot of leeway to the government. The more leeway the government has, the less freedom for the public. It is important to realize that. The freedom enjoyed by the government creates a constraint for the public.

If the bill is passed, Parliament will have delegated. However delegating might give the government control over the legislation. The government would pass it by means of regulations. This is of great concern to me. Again, I note that this year there have been four or five bills which relied so heavily on regulatory authority that we might have been in France, where the executive passes legislation. This is ridiculous! It is government by order in council. People seem to be happy with so-called framework legislation. In Quebec City, we passed framework legislation. What does this mean? It is dangerous. In the French system, it is acceptable. Their system prefers that legislation be passed by the executive. That is their business. In our system, Parliament has always passed legislation and that is how it should continue. The government is giving itself considerable legislative and regulatory authority, in my opinion.

Senator Corbin: I have a copy of the proposed regulation, which is probably the same as the one introduced in the other place. It will be available to honourable senators when we study the bill in detail in committee. I will undertake to obtain a copy for all senators interested in this matter.

We have reached a certain point in the debate. We are agreed that the substance of the bill is not bad. It contains some controversial clauses. We want clarification on the regulatory authority. All this can be addressed in committee.

[*English*]

Senator Murray: Honourable senators, I should like to put a question to Senator Corbin because he has lived with this issue for several years.

Can the honourable senator tell us why the government would proceed by regulation to make exceptions to the prohibition against removal of bulk waters, rather than putting those exceptions right into the act? He has correctly pointed out, in quoting from the draft regulations, that the exceptions are few. Most of them are quite acceptable and quite understandable, but for one that gives me some pause. However, that is irrelevant for the moment.

If you put the details into the bill, then at least if there are to be any changes or additional exceptions made by the government, the government will have to come to Parliament to get that done.

I wonder whether the honourable senator understands or can tell us why the government wants to proceed by way of regulation, rather than statute, with regard to the exceptions to this very important provision prohibiting bulk water removals?

Senator Corbin: I thank Senator Murray for his question and for his concern. The exceptions comprise minor and obvious water uses that do not undermine the ecosystems of the water basins from which the removals are carried out. The government's view was that new situations can occur, but, again, not matters of major concern or major impact. These matters are of a technical nature. The government felt that these matters could be easily dealt with by way of regulation rather than having to come back to Parliament every year, every second year, every third year or whatever.

•(1550)

If the government has to come to Parliament to get proper authorization, as Senator Bolduc says, it will do so and it should do so, but I can assure the honourable senator that the intent of the draft regulations is to deal with these minor concerns. In any case, eventually Parliament has a look and a say in these matters, as Senator Murray knows.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Corbin, bill referred to the Standing Senate Committee of Foreign Affairs.

EXPORT DEVELOPMENT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Setlakwe, seconded by the Honourable Senator Tunney, for the second reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other Acts.

Hon. Donald H. Oliver: Honourable senators, Bill C-31 would make a number of changes to the statute governing the Export Development Corporation. EDC, as it is usually known, is the Crown corporation whose mandate is to support and develop Canada's export trade. In 2000, EDC supported over $45 billion in exports and foreign investments. It is big business and deserves our careful scrutiny.

EDC's operating revenues come from fees, premiums and interest on loans. It does not receive parliamentary appropriations. EDC is not subject to the Canadian Environmental Assessment Act, nor to the Access to Information Act. It is not regulated by the Office of the Superintendent of Financial Institutions, and it does not pay income tax. It can borrow at favourable rates on the credit of the Government of Canada.

In 1993, the Export Development Act was amended to broaden the corporation's mandate and to increase its powers. The act provided for a review of its provisions and operation five years after the 1993 amendments and every ten years thereafter.

In 1998, the government began its mandated review of EDC. As part of that review, the firm of Gowling, Strathy & Henderson was asked to prepare a report. The Gowling report was completed in 1999 and reviewed by the House of Commons Standing Committee on Foreign Affairs and International Trade, SCFAIT, and the Standing Senate Committee on Banking, Trade and Commerce.

The SCFAIT report responded to the 39 recommendations of the Gowling report. The Senate Banking Committee, on the other hand, chose to complement SCFAIT's study by concentrating on a few specific areas. Consequently, the Banking Committee's March 2000 report focused largely on an issue of importance to the committee: the lack of private sector involvement in the medium-term financing of Canadian exporters.

Today I should like to focus my remarks on only two issues: the need to have a rigorous environmental impact assessment of projects supported by EDC and EDC's relationship with other Canadian financial institutions.

Bill C-31 would require EDC to conduct an environmental impact review when undertaking projects or financing. The bill provides that before entering into a transaction related to a project, EDC would have to determine whether the project would likely have adverse environmental effects despite mitigating measures and, if so, whether EDC was justified in entering into the transaction.

The determination would be made in accordance with criteria set out in a directive issued by the EDC board. The directive could set out the decision-making criteria; define certain terms relevant to making the determination, such as "project," "transaction," "adverse environmental effects" and "mitigation measures"; and establish "exceptions" where EDC would not have to make an environmental determination. The exceptions could be defined specifically or according to the class of transaction involved.

Bill C-31 would also exempt EDC from the operation of the Canadian Environmental Assessment Act and direct the Auditor General to audit the design and implementation of the environmental directive at least once every five years.

First, let me say that I welcome the inclusion of environmental review provisions in EDC's governing legislation and that I fully support the provisions that would require the Auditor General to audit the design and implementation of EDC's environmental directive. However, I have a number of serious concerns about EDC's environmental review framework and the provisions of Bill C-31 in that regard.

In 1999, EDC established an environmental review framework. This framework set out the requirements and procedures for evaluating the environmental impact of projects requesting EDC support. As part of its response to the SCFAIT report, the government asked the Auditor General to audit the EDC environmental review framework.

The Auditor General's May 2001 audit found that the environmental review framework had:

> ...most elements of a suitably designed environmental review process and compares favourably with the policies of other export credit agencies around the world.

However, it also found important gaps in transparency, particularly in the areas of public consultation and disclosure of information, all critical elements of a credible environmental review process.

The audit noted that EDC did not subject its short-term insurance business to any type of environmental review in spite of the fact that short-term insurance constituted two-thirds of EDC's business. Although export credit agencies typically exclude short-term insurance from environmental review, the audit pointed out that EDC had not undertaken any type of examination to determine if this exclusion was justified.

To strengthen the environmental review framework, the Auditor General's report recommended, among other things, that EDC categorize its requirements for environmental review, disclosure and public consultation according to the significance of the potential environmental impacts by adopting a system similar to that of other international financial institutions such as the World Bank Group's International Financial Corporation, and Australia's Export Finance and Insurance Corporation; and that EDC clarify the framework's statement of objectives, its coverage, the environmental standards EDC applies, and the environmental grounds on which it will decline to support projects.

Of equal importance was the audit's conclusion that the framework was not operating effectively. There were significant differences between the framework's design and its operation. For example, in a number of cases, EDC did not identify potential environmental risks, and decisions were based on incomplete information.

The following quote from the Auditor General's report illustrates just how serious these gaps are:

> Our review of the Framework's operation found gaps at every stage of the review process: screening for environmental risk and influence, requesting and reviewing environmental information, approving projects, and monitoring. The weaknesses at each stage have a cumulative effect through the process. Only 2 of 25 projects complied with all key elements of the Framework. If risks are not identified, an environmental review is not performed, contract conditions are not imposed, and no monitoring is done.

•(1600)

Let me now turn specifically to Bill C-31. Given the gaps and problems with EDC's Environmental Review Framework identified in the Auditor General's report, I began my analysis of Bill C-31 by asking two basic questions: First, does Bill C-31 inspire confidence that EDC will apply its Environmental Review Framework rigorously; and, second, will Bill C-31 ensure that environmental protection is integral to EDC's operations?

Honourable senators, the short answer to both questions is no. Under Bill C-31, EDC could support a transaction even if it had adverse environmental effects that could not be mitigated. This strikes me as being patently wrong. The government's response to SCFAIT's report states the following:

> As a Crown corporation, EDC is expected to reflect Canadian values on the environment in its activities overseas.

That statement is clear. How, then, can the Government of Canada justify allowing EDC to support projects that have serious adverse environmental effects when those effects cannot be mitigated? When did it become a Canadian value to support environmental degradation in other countries? Ideally, Bill C-31 should require EDC to reject support for projects that pose a serious threat to the environment. At the very least, the Canadian public should be given an opportunity to have input into whether EDC should or should not support such high-risk projects.

Furthermore, in my view, the provisions of Bill C-31 relating to the directive respecting the determination as to whether EDC will support projects having adverse environmental effects are fundamentally flawed. EDC's board of directors would have complete discretion to establish the contents of the directive, including the definitions used, the criteria that EDC would apply when making a determination, and the exceptions that would remove the board's obligation to make an environmental determination in the first place. As a result, EDC itself can establish its own terms of reference and the board of directors can exempt EDC from the requirement to make a determination with respect to any transaction. In essence, the board of directors can make the rules and decide when it does not have to obey them. I find this shocking.

Moreover, because Bill C-31 provides that the directive is not a statutory instrument, the publication and consultation requirements pertaining to the making of regulations would not apply to the making of the directive. Bill C-31 does not spell out any requirements for EDC to disclose information about the projects that it supports. While I understand that EDC must keep commercially sensitive information confidential, it must not use the cloak of corporate confidentiality as an excuse for failing to disclose environmental impact assessments and for declining to open up its environmental review process.

In 1999, SCFAIT took the view that:

> ...disclosure of environmental impact assessments which allows sufficient time for preventative action...should be the operating rule subject only to commercial confidentiality and viability requirements that the Government deems essential.

The committee further called upon EDC to:

> ...explore the option of creating an ombudsman post within its organization to respond directly and in a timely fashion to public inquiries and appeals regarding sustainable development impacts.

In its response to the SCFAIT report, the government stated that it:

> ...agrees that environmental assessments should be made public early in the project financing approval process, subject to competitive and commercial considerations, and subject to further discussion in the context of the elaboration of EDC's disclosure framework.

EDC has developed a corporate disclosure policy, but this policy could be changed at any time. Because EDC is not subject to the Access to Information Act, it is important that disclosure rights be spelled out clearly and they should be in the statute.

Before leaving the topic of the environmental assessment, I should like to say a few words about the environmental assessment process used by Australia's export credit agency, the Export Finance and Insurance Corporation, or EFIC. For environmental assessment purposes that corporation divides projects into three categories: A, B and C. Category A projects are those likely to have significant adverse impacts that may be irreversible, affect vulnerable groups or ethnic minorities, involve large-scale displacement and resettlement, or affect significant cultural or natural heritage sites. For these projects, the bill requires project sponsors to prepare an environmental impact assessment, provide a 45-day public consultation period as part of its internal assessment, and publish details of category A transactions in its annual report. It seems to me that EDC may benefit from considering the Australian environmental review procedures.

In conclusion, I should like to turn to EDC's relationship with other financial institutions, particularly Canadian banks. As honourable senators know, in March 2000, the Standing Senate Committee on Banking, Trade and Commerce released its report on the Export Development Act. In that report, the committee focused on the lack of private sector involvement in the medium-term financing of Canadian exporters. Canada's banks play an important role in supporting Canadian exporters. However, it is generally agreed that they have a rather low level of involvement in medium- and long-term finance. The absence of a guarantee framework for "Consensus" medium- and long-term loans has been a long-standing complaint of the banks. Under OECD Consensus rules, export credit agencies can guarantee up to 85 per cent of medium-term loans. This guarantee reduces the risk for banks making such loans.

The Banking Committee report noted that EDC, however, does not guarantee the full percentage. The Gowlings report recommended that the government create a guarantee facility, using the Canadian Account, to foster greater bank participation in such finance if a sufficient number of banks participated in the program.

The Senate Banking Committee supported the inclusion of banks in medium-term export financing on a level playing field with EDC and called on the Government of Canada to:

> ...establish a guarantee facility that levels the playing field while not compromising EDC's ability to serve exporters, and to report back within six months on steps taken to achieve this objective.

SCFAIT also proposed that the government study the feasibility of a guarantee facility.

In response to the two parliamentary reports, both of the House of Commons and of the Senate, the Government of Canada stated that it also had concerns about the limited participation of Canadian banks in medium- and long-term export financing and agreed to study the proposal for a guarantee program for the banks. The Department of Finance and the Department of Foreign Affairs and International Trade stated that they would:

> ...consult with Canadian financial institutions to determine the current impediments to their involvement in trade finance, and review their interest in the proposed guarantee program.

The government also noted that a Consensus-compliant Canada Account loan guarantee program would require extensive evaluation to assess:

> ...the potential costs to government; the interest of the banks, net benefit to Canadian exporters; and implications for the long-term financial position of EDC.

In order to understand why the banks were absent from the medium-term financing, the Senate Banking Committee examined whether there was a level playing field between the banks and EDC. Several points are clear from our committee's report.

First, despite the fact that EDC and Canadian banks cooperate in a number of areas, EDC is both a competitor of and a guarantor to the banks.

Second, the Banking Committee noted that Crown corporations exist to fill in gaps in the marketplace by providing services that are not being provided by the private sector. If a service provided by a Crown corporation can also be provided by the private sector, the private sector should be able to provide that service. It seems to me that this would be good public policy. EDC has filled export financing gaps, but its position has also allowed it to impede competition.

The committee felt that EDC had not presented a persuasive argument as to why it should continue to be the de facto sole provider of Consensus-based loans in Canada. It was the view of committee members that the banks should have the opportunity to compete with EDC on a level playing field and that Canadian exporters would benefit from a healthy competitive environment.

•(1610)

A representative of a major Canadian bank told the committee that

> Canadian exporters are sometimes at a disadvantage in deals where they are competing against exporters from other countries where ECAs are guaranteeing or insuring local banks. Because of the lack of an effective medium-term guarantee program, the Canadian exporter often has only one financing offer, the EDC offer, whereas the competing foreign exporter has a number of banks competing to put forward the best financing offer.

Competition will allow the market to decide whether the banks have a viable role to play in this area. Indeed, if an EDC bank guarantee scheme offers no benefits to exporters, they will not use it. If exporters do not use it, it will disappear.

Third, it would appear that Canadian exporters are underserviced by EDC and by the market generally. Exporters could benefit from greater awareness and visibility of financing options.

Fourth, banks should be able to compete on a level playing field with EDC. The guarantee facility offered by EDC, its status as a Crown corporation and its position as both a competitor for and an administrator of these guarantees, favours EDC. If EDC were to have a monopoly on medium- and long-term export finance, Canadian taxpayers and exporters could face a potentially dangerous situation.

EDC warned the committee that the guarantee facility recommended in the Gowlings report would cost taxpayers money and would not create the extra capacity that the banks say it would. It is difficult, however, to see how a guarantee facility, run on a cost-recovery basis and created only after a serious expression of interest by the banks, would make the present situation any worse.

EDC has further argued that providing a guarantee as suggested in the Gowlings report would give the banks a subsidy. This is hardly the case. It is a subsidy to the exporter, as is any EDC loan.

There are good reasons to facilitate bank competition in medium-term financing. Medium-term financing can be profitable. Profits from large corporation transactions would allow Canadian banks to make the necessary technological investments that support all bank customers. Furthermore, the development of trade expertise throughout the banking industry allows the banks to provide exporters with one-stop shopping for all their export-financing needs.

Unfortunately, honourable senators, Bill C-31 does not propose any legislative changes in relation to the guarantee program. Three separate reports have examined the issue, yet nothing has been done. It is time to level the playing field between EDC and other financial institutions, and this should be done immediately.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Setlakwe, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[*Translation*]

CONSTITUTION AMENDMENT, 2001, NEWFOUNDLAND AND LABRADOR

MOTION ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Milne:

WHEREAS section 43 of the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies;

NOW THEREFORE the Senate resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE
AMENDMENT TO THE
CONSTITUTION OF CANADA

1. The Terms of Union of Newfoundland with Canada set out in the Schedule to the *Newfoundland Act* are amended by striking out the words "Province of Newfoundland" wherever they occur and substituting the words "Province of Newfoundland and Labrador".

2. Paragraph (*g*) of Term 33 of the Schedule to the Act is amended by striking out the word "Newfoundland" and substituting the words "the Province of Newfoundland and Labrador".

3. Term 38 of the Schedule to the Act is amended by striking out the words "Newfoundland veterans" wherever they occur and substituting the words "Newfoundland and Labrador veterans".

4. Term 42 of the Schedule to the Act is amended by striking out the words "Newfoundland merchant seamen" and "Newfoundland merchant seaman" wherever they occur and substituting the words "Newfoundland and Labrador merchant seamen" and "Newfoundland and Labrador merchant seaman, respectively.

5. Subsection (2) of Term 46 of the Schedule to the Act is amended by adding immediately after the word "Newfoundland" where it first occurs the words "and Labrador".

Citation 6. This Amendment may be cited as the *Constitution Amendment, [year of proclamation] (Newfoundland and Labrador*).

Hon. Gérald-A. Beaudoin: Honourable senators, I should like to say a few words concerning the proposed constitutional amendment to change the name of the province of Newfoundland to Newfoundland and Labrador.

Essentially, this involves a constitutional amendment for the purpose of changing the name of the province of Newfoundland. This affects solely the province of Newfoundland, and does not change its borders in any way. Thus this constitutional amendment clearly falls directly under section 43 of the Constitutional Act of 1982,which states that a constitutional amendment affecting only one or several provinces may be enacted with the consent of the Parliament of Canada or of the province or provinces concerned. The Senate has only a suspensive veto by virtue of article 47 of the 1982 Constitutional Act.

In the case of concern to us here, the legislative assembly of Newfoundland passed a resolution on April 29, 1999, and the House of Commons followed suit on October 30 last.

The 2001 Constitution amendment does not affect the Quebec-Newfoundland border. In 1927, the Judicial Committee of the Privy Council brought down a decision on the question of Labrador. The Privy Council was to decide where the border lay between Quebec and Labrador and it brought down its decision on this.

In the 1949 Constitution amendment, which made Newfoundland Canada's tenth province, there is a reference to the 1927 Privy Council decision. Eminent legal experts have concluded that the legal issue is settled and constitutional case law is clear on this.

Honourable senators, I am in agreement with the proposed constitutional amendment for the purpose of changing the name of the province of Newfoundland so that it will henceforth be the province of Newfoundland and Labrador.

[*English*]

Hon. Charlie Watt: Honourable senators, I should also like to say a few words on this order. First, let me congratulate the people and the Government of Newfoundland and Labrador on this proposed amendment to the Constitution of Canada that provides for the striking out of the words "Province of Newfoundland" and substituting the words "Province of Newfoundland and Labrador." This motion has been a long time in coming and reflects a reality and pride for the Province of Newfoundland and Labrador.

There is another reality that I wish to bring to honourable senators' attention; that is, the mobility of Inuit living on both sides of the unmarked boundaries of Northern Quebec and Western Labrador. For generations, Inuit people have freely moved back and forth, trading with each other and carrying on their traditional activities of hunting, fishing and trapping. Inuit people have socialized and intermarried. They have camped at the sites of their own choosing on either side of the invisible boundary.

•(1620)

All of this takes place without regard by the Inuit for the unmarked boundary separating the two provinces in the far North. I trust that, notwithstanding differences in the provincial regulations and the formal renaming of the Province of Newfoundland and Labrador, the traditional movements of our Inuit people will not be restricted or interfered with in any way as a result of this amendment.

We take for granted that the rights of the Inuit to carry on their traditional activities necessary for their livelihood will continue on both sides of the boundary, as has been the custom for eternity.

Inuit people in recognized settlement areas will continue their traditional pursuits, respecting, where possible, the differing jurisdictions of the provinces as they may apply to those settlements.

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

Motion agreed to.

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to cconsideration of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. Lorna Milne moved the adoption of the report.

She said: Honourable senators, I rise this afternoon to outline the details of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Anne C. Cools: Honourable senators, I rise on a point of order. I was not present in the chamber on Thursday, November 8, 2001, when this report was presented. Therefore, I looked to the record to inform myself of what happened in the chamber at that time and saw, on page 1679 of the *Debates of the Senate,* an astounding thing. It says very clearly, "Youth Criminal Justice Bill Report of Committee—Point of Order." The Honourable Senator Milne says:

> Honourable senators, I have the honour to present the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with Bill C-7, in respect of criminal justice for young persons and to amend and repeal other acts.

Then the astounding thing happens. There is an indication on the record that I have never seen before. The next speaker is "A Clerk at the Table." It is my understanding that the *Debates of the Senate* records the words of senators, senators being the only persons allowed to take part in debate. Something is quite wrong with all of this. It says "A Clerk at the Table" and it seems as though the clerk at the Table has appropriated the task of making the report of the committee, which is extremely unusual.

Senator Lynch-Staunton then interrupts and asks a few questions, after which the clerk at the Table continues.

This strikes me as very strange, very unusual and quite out of order. Could His Honour help me with that? I have never before seen in the *Debates of the Senate* "A Clerk at the Table." Who is "A Clerk at the Table" in a parliamentary proceeding?

The Hon. the Speaker: Honourable senators, the reading clerk commenced to read the report of the Standing Senate Committee on Legal and Constitutional Affairs. Unfortunately, we were absent copies of the report for distribution at that time. Therefore, due to the technical nature of the report, interpretation was not available. The interpreters, quite properly I believe, did not feel that they should be interpreting in the normal course without the text. Therefore, a decision was made to defer the matter until such time as the report was distributed, which it was later on that day. When it was, leave was granted to deal with it.

Accordingly, I do not believe there is any question of the matter being out of order. With regard to a clerk participating in debate, that was not the case. The clerk was simply reading the report.

Senator Cools: I understand that there was a problem with respect to copies of the report, which problem has subsequently been rectified. However, my point still stands. It seems to me clerks at the Table are not supposed to be duly recorded in proceedings since they have no credentials to participate in the debates of this chamber.

The Hon. the Speaker: The Table was not participating in debate. The Table was, as always, simply reading the item on the Order Paper to ensure that all honourable senators were aware of which item we were on.

Senator Cools: The record clearly shows, honourable senators, that the clerk at the Table gave the report of the committee. I accept the explanation, but I am just saying for the record that this is what the record shows. The record does not show what His Honour has described. The record shows that a clerk at the Table is making a report of a committee. That is how it reads and that is the point I was trying to make. I am satisfied and happy that it was a misunderstanding and that the matter has been corrected, but as it reads, that is how it looks.

Senator Milne: Honourable senators, I rise this afternoon to outline to you the details of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-7, the Youth Criminal Justice Act.

As all senators on the Standing Senate Committee on Legal and Constitutional Affairs will certainly agree, the issues surrounding youth crime are complex, frustrating and perplexing, indeed, gut wrenching and emotional. Everyone who sat through the countless hours of hearing over 60 witnesses will certainly agree.

Your committee worked extremely hard on this bill, usually sitting late into the evening, and on three days a week. I will get into some of the details of the report in due course, but I want to provide you with a bit of the background of the proposed Youth Criminal Justice Act.

This bill was first introduced in the last Parliament as Bill C-3. The House of Commons held extensive hearings on Bill C-3, during which it heard from many groups. As a result of those hearings, the bill was extensively redrafted after the last election. I believe that 167 amendments to Bill C-3 were incorporated into Bill C-7. Those 167 amendments represented a concerted effort by the government to balance the diverse and often directly contradictory evidence that the House of Commons committee heard.

•(1630)

As Bill C-7 is fundamentally an amended version of Bill C-3, the House of Commons decided not to hold extensive hearings on Bill C-7. As a result, it became the responsibility of the Senate committee to hear from the Canadian public and gauge its reaction to the changes that were made between the two bills.

As I have already noted, the committee heard from over 60 witnesses, many of whom had appeared before the House of Commons committee on Bill C-3 and a substantial number who had not been heard from before.

With some notable exceptions, the witnesses believed that Bill C-7 is a substantial improvement over the current Young Offenders Act, and that the amendments that were made to Bill C-3 significantly improved the bill and resolved many of the concerns that were originally raised. There is no doubt that not everyone got the amendments they were looking for when Bill C-7 was introduced; but, given the fact that there are such diverging views on this subject, unanimity was, and still is, impossible.

Your committee has adopted a number of amendments. I want to go through them with honourable senators and explain each one.

The first amendment is to clause 2 of the bill. It inserts a clause stating, in part:

> An object of this Act is for the law of Canada to be in compliance with United Nations Convention on the Rights of the Child...

The amendment goes on to say that the YCJA is to be interpreted by the courts in light of that object. The committee heard extensive testimony from witnesses who argued that since Canada has not yet implemented this convention, the federal government should take the opportunity to do so under this act.

Honourable senators, given the fact that the convention deals with many issues other than those of youth justice, full implementation could not realistically be achieved in this bill. As a result, the committee chose to insert one more interpretation clause to the many that already exist in the bill, in the hopes that the UN Convention on the Rights of the Child will affect the jurisprudence in youth justice issues.

The second amendment to clause 2 must be looked at in conjunction with amendment number six of the committee's report to clause 61 because one is consequential to the other. Under the YCJA, as referred to the committee, any child 14 years of age or older who is charged with a presumptive offence as defined in clause 2 was presumed to receive an adult sentence. Under clause 61 of the bill, the provinces could choose to raise the minimum age at which the presumptive offence applies to as high as 16 years of age.

By changing the definition of "presumptive offence" in clause 2 and deleting clause 61, these two amendments increase the minimum age for presumptive offences from 14 to 16 and, as a result, eliminate the ability of any province to change the minimum age at which the presumptive offences will apply.

The final amendment to clause 2 is also to the definition of "presumptive offence." A young offender can be presumed to be sentenced as an adult under the presumptive offence provisions if he or she commits a third serious violent offence. The amendment proposed by your committee allows the attorney general of a province to refuse to treat a third serious violent offence as a presumptive offence. If an attorney general elects in writing to make this choice, the youth will not be sentenced as an adult.

I move now to clause 19 of the bill. Your committee recommends that an additional subclause be added. Clause 19 deals with conferences. Conferences are meetings convened by a judge, a police officer or other justice system official and are designed to provide advice to those who have to decide how a young person should be handled if they get into trouble. The participants in the conferences can include parents, teachers, doctors, social workers and anyone else who provides help and support to youth.

Under the bill, the provinces are given the ability to set out the rules that govern how conferences are convened and the procedures followed at the conference. The proposed amendment mandates that any rules established by the provinces under this clause must first allow for the young person to attend a conference in person and bring a lawyer; and, second, comply with the principles of procedural fairness and natural justice. The amendment is designed to ensure that a young person can fully and fairly participate in the conferences.

The third clause to be amended is clause 25. The committee also recommended that subclause 25(10) be deleted from the bill. This subclause merely stated that nothing in the YCJA prevents a province from establishing a program designed to recover the costs once proceedings against the youth are complete. The committee decided that this subclause was superfluous because it is merely permissive and some provinces already have these types of programs.

Your committee also recommends two amendments in relation to Aboriginal issues. The first is to the sentencing principles contained in clause 38 of the YCJA. The amendment would dictate that judges consider all sanctions other than custody that are reasonable in the circumstances, with particular attention to the circumstances of young people. This is merely an addition to the principles that are already laid out and does not take away from any of those already listed in clause 38.

The second amendment with respect to Aboriginal youth is to clause 50. This clause states that, with certain exceptions, Part XXIII of the Criminal Code, which covers sentencing, will not apply to young people. The amendment adds section 718.2(*e*) to the list of sections that are still applicable under the YCJA. Section 718.2(*e*) states that when determining sentencing, all sanctions other than imprisonment should be considered, particularly with regard to Aboriginal offenders. This amendment directly responds to testimony that the committee heard regarding the *Gladue* decision in the Supreme Court of Canada, which outlined important principles when sentencing Aboriginals. By allowing section 718.2(*e*) to stay alive under the YCJA, the committee hoped to incorporate some of the *Gladue* decision in the legislation.

The next amendment is to clause 61. It was a consequential amendment that I spoke of when I spoke to clause 2, which basically raises the age to 16.

Under the YCJA, it is possible for young offenders to be kept in the same institutions as adults under certain circumstances. Some committee members felt that this did not reflect the UN Convention on the Rights of the Child. As such, the amendments to clause 76 make it mandatory that if a youth is housed in a correctional facility where adults are being held, the youth will be kept separate and apart from the rest of the population no matter how few youth are being kept at that facility.

Moving now to clause 110, which deals with the circumstances under which the name of a young offender may be published, there has been some confusion over the exact effect of this amendment. I want all honourable senators to be absolutely clear about what this change really does entail.

The change is made to the beginning words of clause 110(2). It does not change the subparagraphs (*a*), (*b*) and (*c*) that follow. The change to the opening words inserts a public interest test into the section. As a result, the name of a youth who is dealt with under the YCJA can only be published if one of (*a*), (*b*) or (*c*) are met and a judge determines that the release of the information is in the best interest of the public.

•(1640)

The amendment makes it more difficult for those who, for example, have committed a third, serious, violent offence to have their names published. Not only will they have to commit the presumptive offence, but a judge must also think that it is proper for the name to be released.

The committee also proposes an amendment to clause 125 of the proposed act by inserting an additional subclause after clause 125(6) and then renumbering subclauses 125(7) and 125(8). The insertion proposed makes it mandatory that the court release information to representatives of school boards if certain conditions are met. The information must be released if it is necessary to ensure compliance with a probation order, if it is needed to ensure the safety of staff or students at a school, or if the disclosure is needed to facilitate the rehabilitation of a young person. If any of those circumstances are met, a judge has no discretion and must order the release of the information.

As the bill is currently drafted, school boards can still obtain this information but the judge retains the discretion to release it or not, as the circumstances require.

An amendment to clause 146 of the bill, our tenth amendment, recommends that clause 146(6) of the proposed legislation be deleted. This clause states that a court has the right to admit into evidence a statement obtained from a young person, even though there may be technical irregularities in the manner in which the report was obtained.

By way of background, clause 146 is a short directive on how to handle statements made by young offenders. In the clause, there are many strict rules that are designed to give enhanced procedural protection to youth, as is required under the Charter.

Currently, the vast majority of statements by youth are not admitted as evidence because of technical breaches in the law and other rules. Subclause 146(6) adds some flexibility to the situation by allowing the statements to be admitted if there are technical irregularities but only — and I express only — if the principles of enhanced procedural protection for youth are maintained. In the unamended bill, that was judged a narrow window of opportunity to allow more statements to be admitted into evidence. The amendment proposes to shut the window and demand absolute adherence to the strict rule.

The final amendment, honourable senators, concerns a review period. The amendment demands that three years after the proposed act comes into force, and every five years thereafter, the Minister of Justice is to review the effectiveness of the proposed act and report to Parliament. Furthermore, that report is to be reviewed by committees of both the Senate and the House of Commons or a joint committee. The committees that review the proposed YCJA are then to report to their respective Houses on their findings.

Honourable senators, as Chair of the Standing Senate Committee on Legal and Constitutional Affairs, this was a long and exhaustive process. I have tried to make as fair and full an explanation of the 13 different amendments to 11 different clauses of this bill as possible. However, I would be less than fair or frank with this house and with myself if I did not also tell you that I personally voted against every single one of these amendments. I will also tell you that, although I am moving the adoption of this report as the Chair of Standing Senate Committee on Legal and Constitutional Affairs, as an individual senator I plan to vote against the adoption of this report.

Senator Cools: Honourable senators —

The Hon. the Speaker: I would ask Senator Cools to take her seat, please.

I have just been advised by the Table that the time for Senator Milne's speech has expired. Before we can proceed with any matter further to her comments, we require leave to extend her time.

Is Senator Milne asking for leave?

Senator Milne: Honourable senators, since I did not support any of these amendments, if questions are to be answered properly they should be directed to those senators who made the amendments. I will not accept questions.

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, I rise on a point of order. The extension of time is irrelevant; the honourable senator did not address it.

The Hon. the Speaker: There is no time left. Another senator may wish to rise and speak. I know Senator Beaudoin was going to speak. Senator Lynch-Staunton also wishes to speak.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to have a ruling on whether it is proper procedure for a member of this chamber to move the adoption of a motion and then claim that she will not support her own motion. I find that contradictory. Perhaps the honourable senator would want to remove herself as the sponsor of the report and allow the deputy chairman to sponsor it.

The honourable senator is in an awkward position, and I do not think she should be put in that position. I admire her honesty. I think she explained the amendments extremely well and impartially, but we should save her any embarrassment or misinterpretation. To find her voting against her own motion is something we do not want to happen here.

Hon. Nicholas W. Taylor: Honourable senators, on the point of order, the Honourable Leader of the Opposition may recall a time three years ago when the Minister of Energy was here and Senator Ghitter, from Calgary, was committee chairman that Senator Ghitter did not carry the majority on a report to be filed with the Senate, naturally, because it was a Liberal-dominated committee. Senator Ghitter did exactly the same thing that Senator Milne has done here today.

We found out at that time, after going through the legal precedents at that time, that there is no such thing as a minority report. The chairman has no choice but to report to the Senate, as Senator Ghitter did. Senator Ghitter announced that he would vote against the motion, which he did, and he had an honourable right to do so.

This has happened before. It is not new at all for a chairman. That this chairman happens to be in the majority party does not matter. The chairman is not allowed to make a minority report but can then turn around and vote against it.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, that is not the point.

The Hon. the Speaker: Honourable Senator Cools, on the point of order.

Senator Cools: I usually know where we are, honourable senators; however, I have a problem that I would like resolved. I am not too sure how we can resolve it. Perhaps this point of order will resolve it.

We have been told two things here. We have been told that the chairman has moved a report in which she has no confidence. In essence, she has said that any questions about the report and those amendments should be directed to someone else.

As a point of order, I should like to know who is the "someone else" to whom we should direct our questions about the committee's mindset as it arrived at these particular decisions. I should like to hear that answer as a matter of order.

•(1650)

The second question that I should like answered as a matter of order is the fact that a committee is, in point of fact, a delegate of the Senate. Any of the parliamentary authorities on committees could tell you that. People like Sir Reginald Palgrave would have said that in their works. It is a well-known fact that the Senate delegates or commits a bill to a committee — that is the word, "commit" a bill to a committee — for the purposes of seeking the assistance of the committee in the consideration and study of the bill. It is not a personal matter at all. The Senate, in point of fact, asks the committee under a reference, under an order, to study a matter to assist it.

My question, then, as a matter of order, is this: Does the chairman's position constitute assistance to the Senate?

The Hon. the Speaker: Are there any other senators wishing to comment? If not, the question that has been put to the Chair is this: Is it in order for the proposer of a motion to not vote for the motion that he or she has proposed?

The fact of the matter is that this is after the fact. Senator Milne moved the adoption of the report. We have not put the question. I listened to Senator Taylor, and I remember the same circumstance that he does. However, to be absolutely certain, I will review the record.

In terms of Senator Cools' points, I am not sure that I can do more than refer Senator Cools back to Senator Milne's comment, which, as I recall, was that the proposers of the amendments are the people who should respond to the question.

This bill is at report stage. I do not think that I would be indicating that we should open up the procedures that we have in our rules and have provided for in terms of putting questions as suggested by Senator Milne. She has indicated she is not prepared to answer questions. In any event, her time has expired. Accordingly, I do not see that as a valid point of order.

Senator Lynch-Staunton: I do have a valid point of order, I believe. When His Honour does come back to the chamber with his thoughts on this matter, I should like to find a way to not have what I find to be a most distressing event, that of having a chairman of a committee say, "I am not prepared to defend this report; ask the people who are responsible for it." I would have thought a chairman of a committee feeling that strongly about a report, and I respect her for that, would have delegated the responsibility of defending the report to someone who is more enthusiastic than she is. Otherwise, we could have read the report. We just had a narrative. These are important suggestions to a very important, controversial bill. To be told by the chairman, "I am not prepared to defend this report because I do not believe in it, so go and find the people responsible for it," I find irresponsible.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of all senators, I would like to say that even though the chair of the Committee on Legal and Constitutional Affairs has told us that she is not prepared to support the tenth report, she nonetheless wrote it and gave a fairly accurate description of the amendments it contained. The fact that she does not wish to reply to questions on the amendments is not really that important because the debate is open on the committee's report.

An honourable senator will probably adjourn the debate and those senators who moved amendments in committee will have an opportunity to do so here in a debate which will take place and in which all senators will have an opportunity to put questions to those who moved these amendments.

[*English*]

Senator Kinsella: Honourable senators, I draw your attention to rule 98, which states:

> The committee to which a bill has been referred shall report the bill to the Senate. When any amendment of the bill has been recommended by the committee, such amendment shall be stated in the report.

We are clear, therefore, as to how we in the chamber receive the report and the amendment contained therein, as is the case in the matter before us right now.

Rule 99 states:

> ...the Senator presenting the report shall explain to the Senate the basis for and the effect of each amendment.

I listened carefully to the chair of the committee, and I was fairly satisfied with the explanation. I was about to ask a question, but I have heard from other senators who have questions and were in committee and studied this bill more profoundly. I am wondering if there is an obligation to explain amendments that goes beyond simply getting up and explaining them.

Although I was satisfied with the presentation, I did have a question. Time ran out. I would think the honourable senator who has the floor is the one who can exercise the right to ask the house for leave to extend time. I do not think we can impose that upon another senator.

Perhaps this is something that needs to be looked into. I think that all honourable senators are interested in understanding this bill and these amendments that have been proposed by the members of the committee. That is the real issue here. The implication was that perhaps the deputy chair could explain it if the chair could not.

I think we must look very carefully at rule 99 because it does say there is an obligation to explain. There are many senators here this afternoon who have not had these amendments explicated fully enough. How do we get the fuller explanation being sought?

If it is helpful, honourable senators, that is the rule that I think speaks to the obligation to have amendments contained in a report explained.

Hon. Eymard G. Corbin: I wish to make two brief comments.

First, the chair of the committee is the messenger of the committee. We must not forget the process. The bill is adopted clause by clause. It may be or not be modified. At the end of the process, the chair of the committee puts the following question: "Shall I report the bill?" If the bill is unamended, it is unamended. If the bill is amended, it is as amended. That senator is the messenger of the committee. That does not bind her ideologically, morally, personally or in any other fashion to the contents of the report. She is still a free agent as a member of this house to dispose of the report as she sees fit when she rises in her place.

Second, on the explanations and the point made by my friend from Fredericton, Senator Kinsella, I remember that there was a time in the other place when one went to the official record if one wanted explanations. The official record in this case is not only the report but also the minutes and the transcript of the committee. That is where one goes to find out who made motions, explained and so on because the report does not name persons. It is the report of the committee as a whole. If one wants details, who was the author of the amendment or who spoke for or against it, the transcript is very much an official document. It is not physically attached to the report, but it is part of the report, the entire thing is together.

•(1700)

Therefore, as much as I, from time to time, put questions to honourable senators who make committee reports, I know for a fact that I can get my answers by looking at the record and that is what I do.

Senator Cools: Honourable senators, I very much appreciate what Senator Corbin had to say. However, we must add to that the fact that, at the end of the day the committee speaks with one voice and every single member of the committee is bound by the decision of the committee, just as they are with any decision of the Senate chamber.

Some Hon. Senators: No, no!

Senator Cools: Oh, yes, they are. Committee members may change their minds later, as they go along, and it is entirely possible that a member can be persuaded in the process of the debate that their judgment was erroneous, incorrect or improper. However, that does happen and the record is replete with examples of that.

What is unusual in this instance is for a chairman of a committee, in presenting the report, to say that he or she has no confidence in the report and to express there and then, at that time, that they will not be voting for it. That is not subjecting themselves to debate or to persuasion. The argument cannot be made that the chairman of the committee, who speaks for the committee, was persuaded to see a different point of view during the process of debate. The fact of the matter is that the committee speaks with one voice.

There have been many novel innovations in the last many years. We have seen majority and minority reports. Much of that is meaningless. There is but one report of the committee, and there is but one decision of a committee; that is the decision that the Honourable Senator Lorna Milne reports.

I understand, I am sympathetic and I am prepared to be persuaded by the honourable senator, if she should speak to us, that she is so distressed by the process that she wants to dissociate herself from the report. However, that is a matter that should be debated. If she is so distressed and wants to dissociate herself from the committee report, that is something that we should try to understand having been informed of the reasons why. Those reasons should also form part of the debate.

We must clearly understand that a committee is a delegate. The chairman of the committee is a delegate of the Senate. The first duty of that chairman is to bring information forward to this chamber so that senators can debate information. Who knows, she might persuade some of us. Obviously, if she is free to change her mind, so are the other individuals on the committee. I would have thought that a good chairman would be willing to try to persuade us politically, in debate, to see the matter from her point of view. Therefore, want to be subjected to that attempt at persuasion. I would encourage Senator Milne to attempt to persuade me to her point of view. She may be successful; she might surprise herself.

Finally, honourable senators, what we have been told here is that debate is inconsequential. Rule 99 is consistent with parliamentary jurisprudence, practice and the custom and usages of Parliament. What Senator Milne has done is not.

Rule 99 clearly points out that the senator presenting the report shall explain — not "may explain" — to the Senate the basis for and the effect of each amendment.

Senator Robichaud: This is exactly what she did.

Senator Cools: I am prepared to debate, but you have to debate. About rule 99 —

The Hon. the Speaker: Order. Honourable senators, there is quite a bit of noise. I would ask Senator Cools to come to her point. I have other senators wishing to intervene. I have the gist of the intervention, but I would ask Senator Cools to be brief.

Senator Cools: Honourable senators, rule 99 not only anticipates a suitable and proper explanation from the chairman of the committee, it mandates and orders such an explanation.

My recommendation to the Senate is that if the committee chairman finds herself so stricken or concerned that she cannot make that suitable explanation as required by rule 99, then the solution is simple: Appoint another senator who will make the suitable explanation on behalf of the entire committee.

Senator Taylor: I hate to disagree, and I do not believe I have to in this instance. It seems to me that by the time the honourable senator, my old seatmate, got to the end of her intervention, she was in accord with what was happening anyhow.

I refer honourable senators to Beauchesne's, 6th edition, paragraph 873 that says:

> The report of the committee is signed by the Chairman, or in the absence of the Chairman, by the Vice-Chairman or any other member of the committee.

That is about as broad as you can get.

> The Chairman signs only by way of authentication on behalf of the committee. Therefore, the Chairman must sign the report even if dissenting from the majority of the committee.

In other words, the chairman has presented and signed the report. She has said she dissents. What are we going to do, hang her by the thumbs?

The Hon. the Speaker: Honourable senators, I believe I have had a good bit of help from you in terms of the request for a ruling pursuant to Senator Lynch-Staunton's intervention.

I believe Senator Milne made the motion properly, spoke properly, but ran out of time. At this point, I will accept a motion to adjourn the debate and I will be happy to do my best to come back with a ruling on this matter at the earliest possible moment.

On motion of Senator Beaudoin, debate adjourned.

[*Translation*]

OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Lapointe, for the second reading of Bill S-32, to amend the Official Languages Act (fostering of English and French).—(*Honourable Senator Poulin*).

Hon. Marie-P. Poulin: Honourable senators, it is with great pleasure that I stand before you today to support Bill S-32, to amend the Official Languages Act.

The purpose of this bill is to reinforce the federal government's commitment to French- and English-speaking minorities in Canada, and to foster the full recognition and use of French and English in Canadian society. These measures will be taken in accordance with subsections 16.(1) and 16.(3) of the Constitution Act, 1982.

Honourable senators, it is in the socioeconomic context of globalization that I am supporting this bill, which would give the government's linguistic commitments greater weight. The bill requires that the government, and I quote: "take the measures necessary" to attain these objectives.

Replacing section 41 of the Official Languages Act with the wording proposed in Bill S-32 will reinforce the government's intentions with respect to its linguistic policy.

•(1710)

Hon. Jean-Robert Gauthier: Honourable senators, I should like to thank all those who supported the bill and took part in the debate.

I recognize that the question is complex and that it has serious repercussions for Canada as I see it. Bill S-32 is, in a way, an initiative intended to promote debate. You will understand my frustration. Since 1988, I have been trying to have this legislation benefit official language minority communities.

The problem of assimilation is a serious one. Certain problems affect the development of communities and others concern day to day communications. You have often heard me speak of a national television network for francophone communities.

If we do not see each other, interact and agree, in the end we will be seen as no longer existing. There are the naysayers who claim that the minorities are disappearing and that they must be forgotten. That is wrong. With good legislation in place to protect linguistic minorities, I am convinced those who speak negatively of minorities will be proven wrong.

Yesterday I received a letter from the Minister of Justice. A few months ago, I had written her to try to find a solution to the problem relating to section 41, specifically to part VII of the act, which is not judiciable, which is excluded. We cannot go before the courts to defend our rights. We are told the language of section 41 is declaratory. The minister uses other terms in her letter. She says it is not a legal, but rather a political matter.

You will understand that if people continue to speak in terms that are hard to interpret, and communities cannot defend their rights before the courts, we are at a disadvantage in many regions.

We could perhaps take a look at the New Brunswick Official Languages Act. Bill S-32, which I have introduced, refers to the measures that must be taken to help official language minority groups.

We could draw on the New Brunswick legislation and add positive measures. There are all sorts of ways of strengthening section 41 and give it teeth. I am neither expert, lawyer nor constitutionalist, but I know that, with political will and help from my colleagues in the Senate, a solution may be found and amendments made to the Official Languages Act. This is the reason for Bill S-32.

I know that it is not the end of the world. However there are no doubt regulatory means that might reinforce the legislation. The Senate committee which will be examining the bill will certainly have the benefit of legal and constitutional opinions.

In addition, the Minister of Justice could come and explain to us why she believes that clause 41 is a political issue. I should like to take this opportunity to thank all honourable senators and tell them how pleased I am of their support.

Hon. Eymard G. Corbin: Would Senator Gauthier object to the letter he has received from the Minister of Justice being circulated?

Senator Gauthier: A copy will be sent to all of the senators.

Hon. Jean Lapointe: Honourable senators, Senator Gauthier knows that I have supported him from the start. I very much liked his idea of creating a television network for the minorities, whether francophone or anglophone, whether in Manitoba or elsewhere in the country. One could think for instance of the anglophones in the Eastern Townships or Quebec City, who are a minority. I am sure that this network will be as valuable as CPAC.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Gauthier, bill referred to the Standing Committee on Legal and Constitutional Affairs.

•(1720)

THE SENATE

TIME ALLOTTED FOR TRIBUTES—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of Senator Lapointe, calling the attention of the Senate to the time allotted for tributes.

Hon. Lise Bacon: Honourable senators, my speech will not be long. Our colleague Senator Lapointe demonstrated courage and boldness when he asked us to restrict to some extent the tributes made to some of our colleagues, be they with us, or having left us.

I completely agree with him. In other legislatures, not every member pays tribute to colleagues on the occasion of a death, departure, retirement or other type of ceremony. Very often, both government and opposition leaders are the ones who speak, as well as one or two senators who may have been particularly close to the person to whom tribute is being paid. I completely agree that this house loses enough time during certain debates. We could be more diligent in some of our speeches.

On motion of Senator Gill, debate adjourned.

LA FÊTE NATIONALE DES ACADIENS ET DES ACADIENNES

DAY OF RECOGNITION—MOTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Léger:
>
> That the Senate of Canada recommend that the Government of Canada recognize the date of August 15th as Fête nationale des Acadiens et Acadiennes, given the Acadian people's economic, cultural and social contribution to Canada.

Hon. Viola Léger: Honourable senators, it is my great pleasure to rise in support of the motion presented by my colleague the Honourable Senator Losier-Cool, to recommend that the government recognize August 15 as the Fête nationale des Acadiens et des Acadiennes.

I am also very honoured to be able to do so here as a senator from Acadia. Since the time of the illustrious Senator Pascal Poirier, the first Acadian to sit in this house, Acadian senators have always showed a deep and sincere commitment to this assembly and to the Acadian people. I have every intention of following in the footsteps of my predecessors, so that Acadia will continue to get increasingly stronger, vibrant and dynamic.

The motion before us today is very eloquent. Acadia can indeed take pride in its contribution to Canada's economic, cultural and social vitality. Acadia came to existence in 1604. Slowly, with the modest means available to it, it took roots. It has grown and it continues to grow. Even though Acadia experienced a great tragedy, Acadians have always had great confidence in life. They were able to keep their heads high, because their heart is in the right place and because they have intestinal fortitude. In the wake of the unfortunate incidents that marked their history, they decided to get together and celebrate their feeling of belonging. They wanted a celebration that would be a testimony to their solidarity, perseverance and confidence in the future.

This is how, at a national convention held in Memramcook in 1881, delegates from every corner of Acadia chose August 15 as Acadia's national holiday. Since then, Acadians have always celebrated their national holiday with great enthusiasm. Every year, our holiday is marked by a lot of noise when Acadian men, women and children walk on the streets to affirm their presence in America, their French pride and their joie de vivre.

The Acadian adventure has been going on now for close to 400 years. Planning is already underway for large-scale celebrations to mark this 400th anniversary in 2004, and I am sure that they will be a source of great pride.

Over its 400 years, Acadia has helped to make Canada the magnificent country it is today. I would particularly like to speak to you about its cultural contribution to our Confederation.

If there is one area in which the Acadian people have distinguished themselves in Canada and throughout the world, it is through culture. I am an active participant in that culture and I know whereof I speak. I have appreciated and experienced all the richness and diversity of artistic expression in Acadian. Over the centuries, hundreds of Acadians have sought, in and through their art, to define the soul of Acadia. Whether they are still living on their ancestral lands or have taken up existence in one of the four corners of the world, they have worked very hard, and continue to do so, to help us collectively to trace a portrait of our identity. An identity which fears neither its folklore nor its modern manifestation. An identity focused on imagination, innovation and creative excellence.

Acadia has found its expression through many avenues. For years, its schools and its famous classical colleges were the primary sites for the creation of choirs, theatre companies and dance troupes, which were praised for their excellence in Canada, in the United States and as far away as Europe. As proof, I give you the fact that our choirs have won the famous Lincoln trophy nine times. This period in our history was enriched by the contributions of remarkable artists, such as the celebrated violinist Arthur LeBlanc and the no less celebrated opera singer Anna Malenfant, who dazzled international music scenes.

Over the past thirty years, the vitality of the Acadian culture has burst forth in the public place primarily. Art in Acadia has grown so that the festivals, artistic institutions and networks that promote and disseminate them have sprung up all over. The Festival acadien, the Pays de la Sagouine, the Grand-Pré national historic site, the Théâtre populaire d'Acadie, to name but a few, are sites of creativity where every year — and in many ways — what may be called the Acadian soul bubbles forth. In all cultural sectors, people are rolling up their sleeves to ensure a rosy future awaits the Acadian culture.

Indeed, it is with pride that I say the extraordinary panoply of artists giving expression to Acadia is quite simply astounding. Whether it be in literature, music, the visual arts, theatre, the cinema, video, dance, the multi-disciplinary arts or architecture, the better known artists have made their mark, and the next generation is springing up. From Antonine Maillet, winner of the Prix Goncourt, to the young poet Jean-Philippe Raîche, currently short-listed for the Governor General's Award, to Hermémégilde Chiasson, honoured by France as a Chevalier des Arts et des Lettres, to Serge Patrice Thibodeau, winner of several literary awards and France Daigle, Raymond LeBlanc, Gérald Leblanc, Rose Després, Dyane Léger and so many others, a wave of Acadian literature is swelling in Acadia, Canada and internationally.

•(1730)

In music, I would be remiss in not mentioning the extraordinary creative contribution by Michel Cardin, world-renowned lute player, and the University of Moncton's Arthur LeBlanc quartet, with its solid reputation. On the musical scene as well, we have the famous Cajun Zachary Richard, as well as Édith Butler, Angèle Arseneault, Barachois, Grand Dérangement, Roch Voisine, and all the rest, including new group of the year Feu Vert, recognized as such as the recent Prix Éloizes gala.

In the visual arts, who could neglect to mention the highly contemporary work of painter Claude Roussel, and sculptress Marie-Hélène Allain, as well as Yvon Gallant, Roméo Savoie, Nérée deGrâce and all the up-and-coming artists still perfecting their art.

And then there is Acadian theatre. Ranging from the character of *La Sagouine* — whom I have come to know well, so I may be permitted a little knowing wink here, perhaps! — to the Théâtre populaire de l'Acadie, celebrating twenty-five years of existence, Acadian theatre continues to flourish and expand both at home and abroad. Speaking of the flourishing Acadian theatre, I would like to salute the Théâtre de l'Escaouette, which courageously mounts first-performance Acadian creations in order to give Acadian playwrights, both the young and the not-so-young, the opportunities so necessary to their art.

Over the years, Acadia has also produced a few filmmakers. I am thinking of Léonard Forest, Herménégilde Chiasson, Phil Comeau, Rodrigue Jean and his *Full Blast*, and young Renée Blanchar, a member of the jury at the Cannes Film Festival.

But Acadia knows how to dance too! From folk dancing groups such as the Danseurs du Haut-Saint-Jean, who just recently charmed Canadian and European audiences, to the DansEnCorps troupe from Moncton, with its modern take on this art form, dance has always been a vital part of Acadian culture.

I have just evoked a veritable mosaic of artists who are the pride of Acadia and of Canada. Naturally, I would have liked to name every single artist, but the time and space available to me here are limited. For the number of artists that Acadia has given to Canada and to the world is considerable. But I would nonetheless like to pay tribute as well to those who work away from the glare in conditions that are not always easy. Their commitment gives me hope in our collective future.

The economic potential of the arts is enormous. According to Statistics Canada figures for 1997, culture is one of the most rapidly developing sectors in New Brunswick, with a job growth rate of 12.2 per cent compared to 5.1 per cent for Canada as a whole. The direct and indirect impact on the economy represents millions of dollars and tens of thousands of jobs: a solid investment.

I am glad that, thanks to the Department of Canadian Heritage and the Canada Council, increasing numbers of Acadian artists have access to grants and subsidies, which allow them to devote themselves to their artistic endeavours and thus help enrich Canada's cultural heritage.

I sincerely hope that, here in the Senate, we will examine more closely the various facets of artistic creation, so that the Government of Canada can continue to support and promote these artists.

Through literature and theatre, Acadia expresses itself. Through painting, sculpture, cinema and videos it expresses its vision of the world. Through dancing, it shows its strength and vitality. It is through our artists that we realize that the Acadian identity is as broad as life, because it knows no boundaries.

Whether in Newfoundland, Louisiana, Caraquet, Montreal or Belle-Île-en-Mer, the Acadian soul is constantly reborn. We are intrigued, seduced and moved by it. It also makes us laugh, and sometimes cry. It makes us travel through time and space. The arts are a people's soul. Without arts, there can be no identity. And without identity, a people cannot exist. The Acadian culture has been one of the most effective tools to ensure the future of the Acadian people. Today, it is also contributing to making Canada a country with multiple accents and with infinite opportunities to develop. The Acadian culture helps promote Canada, because it is now known and celebrated throughout the Francophonie. For that reason, it participates in the dialogue of cultures between the states and governments of the Francophonie, as was so brilliantly demonstrated at the Francophonie summit held in Moncton, in 1999.

The Acadia of 2001 is now an essential component of Canada's multicultural panorama. We can take pride in saying that, indeed, we were heard from "coast to coast," to quote Canada's beautiful motto. In this respect, Acadia deserves to have the country mark its presence, and also the quality and vitality of that presence by recognizing August 15 as the Fête nationale des Acadiens et des Acadiennes.

On motion of Senator Bryden, debate adjourned.

[*English*]

UNITED STATES NATIONAL MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THAT THE GOVERNMENT NOT SUPPORT DEVELOPMENT—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Finestone, P.C.:
>
> 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 thirty years,
>
> And on the motion in amendment of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Bacon, that the subject-matter of this motion be referred to the Standing Senate Committee on Defence and Security for study and report back to the Senate.—(*Honourable Senator Wilson*).

Hon. Lois M. Wilson: Honourable senators, for a number of reasons, I do not support the development of a national missile defence system, called NMD by the United States; nor do I support Canadian involvement in such a development. In fact, I hope that Canada will demonstrate leadership to convince other countries, such as China, Russia and the NATO allies, that alternatives to NMD exist and must be implemented if another nuclear arms race is to be averted. A number of questions must be raised about the wisdom and feasibility of such a plan.

The first question concerns the contravention of the 1972 anti-ballistic missile treaty if the NMD is allowed to proceed and the consequent escalation of the arms race. The anti-ballistic missile treaty was hailed as a major milestone for the international community to protect against another arms race. That treaty established stability and confidence in the international community as nuclear superpowers agreed not to develop further defensive systems. One hundred and eighty signatories, including the U.S.A., have made an unequivocal undertaking to accomplish the total elimination of nuclear arsenals.

For some time, Russia joined the European Union and others in opposing the revision of the ABM treaty, since such revision would increase the risk of nuclear proliferation and an arms race.

But has the recent meeting of President Bush and Russian President Putin prompted the U.S.A. to a two-thirds cut in U.S. strategic warheads in exchange for Russia allowing America to proceed with testing the anti-missile systems?

•(1740)

Both Moscow and Washington have made massive reductions in their nuclear arsenals, but both are keeping sufficient warheads and missiles to perpetuate "mutually assured destruction" and a corner of their strategic parity will remain.

A November 14 news item quoted President Putin as saying that Moscow has adamantly opposed scrapping the plan, and the position of Russia remains unchanged on the ABM treaty. Colin Powell confirmed that there would not soon be an agreement on such missile defence, but it bears watching that Moscow may simply opt not to accuse Washington of breaking that treaty by conducting further testing.

The second question I have is around global security. Long-range ballistic missiles increase insecurity. No corner of the world is safe from their reach. The events of September 11 revealed the shared vulnerability of human beings and the irrevocable interdependence of the world. The promotion of the missile defence system has caused other countries to perceive the NMD as an increased long-term strategy by America to control outer space by instituting unilateral security. This confounds the rationale of the U.S.A. that maintains that in their hands nuclear weapons are agents of security, but in other hands they are instruments of terror, war or mass destruction. A unilateral move away from the disarmament agreements of the international community based on legal instruments puts everyone's security into question.

Foreign Minister Axworthy introduced the concept of human security into foreign relations, emphasizing that what was needed was a rethinking of what security means for the world. Is it not time we do this, now that the events of September 11 have revealed not only a serious breach in American security but also the vulnerability of us all?

The debate should be about more than missile defence. Is it not time we debated how to manage collectively our increased interdependence at a time when the U.S.A. appears not to want to be accountable on many issues to the international community? It will not be an easy debate. Canada's policy is to promote nuclear stability, avoid further proliferation, strengthen global governance in an increasingly interdependent world, and stimulate debate on the further governance of global human security.

Will the debate with Canada sour relations with our American neighbour? After all, we are part of this continent. If we turn NORAD into part of the missile defence system, history's judgment of our commitment to the international community will be harsh.

The third question concerns technological problems. NMD has not yet been proved technologically feasible. The debate rages on as to whether even if feasible there may be a number of rather easy ways to defeat it — by decoys, by offensive saturation or by blinding the sensors on which the systems logic is based.

To test its proposed technology, the U.S. has already been building a missile defence station at Fort Greely in central Alaska, a site the administration says is needed for testing missile defences. It plans to deploy five interceptors in Alaska next spring in violation of the ABM treaty and at great financial cost. Will this testing encourage other nations to develop their technology to block such developments so that, in fact, we are into another arms race willy-nilly?

What are the alternatives? Surely, we must work to preserve the anti-ballistic missile treaty until a more comprehensive framework can be established. Everything needs to be tried — economic incentives, cooperative programs, multilateral efforts to freeze and reduce missile capabilities, and diplomatic relations with states such as North Korea, which Canada already has, to place a freeze on any missile system. Now is the time to focus on working with the UN and international partners to advance global cooperation on disarmament and elimination of the dangerous Cold War targeting plans. We must pay attention to this even at a time when anti-terrorism strategies have understandably captured the whole agenda. While currently the main problem is the vast stockpile of weapons of mass destruction, such as germ and gas warfare, so beloved of terrorists, sight must not be lost of the ongoing plans to build a missile defence system that could intensify international insecurity in the future.

One of the lessons of September 11 was that security must be understood in a global framework, since even the strongest are seen to be vulnerable. A central insight of peace building is that peace and disarmament and security do not endure through enforcement or building higher walls, but through forging political, social and economic conditions conducive to stability for all.

Security needs to be redefined beyond the military dimensions of national interests to the fulfilment of human needs and a cleanup of the swamp and cesspools of despair and poverty that breed hate. Part of the equation is that the deprivations that Third World countries suffer must be vigorously targeted, and Canada's overseas development aid must be restored to more acceptable levels. Third World debt must be erased so that the poorest countries can begin again with a clean slate. More equitable trading practices with Third World countries must be put in place. Money must be spent to help the poorest countries establish basic infrastructure rather than enhance their military forces.

Canada should and could be a leader among G8 nations in this effort. Coupled with a clear rejection of Canada's support for the development of the NMD, this development approach would go a long way to achieving some measure of security for the global family. There is time, as Canada, to my knowledge, has not yet been asked officially by the United States to take a position.

I therefore hope that this motion on recommending non-support of the NMD goes to the Standing Senate Committee on National Security and Defence for timely, sustained debate and report back to the Senate.

Hon. Marcel Prud'homme: Honourable senators, even though I was not made aware that it was to be the wish of the Senate to send this matter to committee, and after a strong appeal by my colleague, I will not be speaking to this issue. I did not know there was such an agreement. I do not wish to be the one to break that agreement.

On motion of Senator Taylor, debate adjourned.

AFGHANISTAN

DECREE REQUIRING NON-MUSLIMS TO WEAR SPECIAL IDENTIFICATION—INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to the Islamic Emirate of Afghanistan's May 22nd decree that would force non-Muslims in that country to wear special identification on their clothing. She believes it is important that this distinguished Chamber not remain silent on this question but to go on record in expressing its collective displeasure with that nation's flirtation with policies that set the stage for events that proved horrific in recent human history. Let us learn from our mistakes. Let us not repeat them.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, to the surprise of many, I will be extremely brief, following the good counsel of my good friend Senator Lapointe.

Honourable senators, I know you probably never, not even in your wildest dreams, thought that you would hear me agreeing so passionately with Senator Finestone. For all intents and purposes, I am. Forcing someone to wear something that would identify their ethnicity or religion is a deplorable and repulsive act that reminds us of the fascism that riddled Europe in recent times.

At the same time, I plead with honourable senators to be consistent with their principles and to condemn this act wherever it may occur, not just in Afghanistan. For instance, they should also condemn the fact that for the past 35 years Palestinians have been forced to have a different colour of plate than the Israelis. They should also condemn the fact that there are special ID cards for non-Jews, while Jews carry a different-coloured card.

•(1750)

That, too, my dear colleagues, deserves our condemnation.

The Hon. the Speaker: If no other senator wishes to speak, this inquiry is considered debated.

MR. FAISAL HUSSEINI

TRIBUTE—INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator De Bané, P.C., calling the attention of the Senate to Mr. Faisal Husseini, one of the great leaders of the Palestinian people, who died on May 31.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, the events taking place in the West Bank and Gaza and the dwindling prospects for peace are but a testimony to how great a tragedy it has been to lose a very good friend, Mr. Husseini. His leadership is very much missed. His is from one of the oldest families of Jerusalem. The Husseinis have owned Orient House for hundreds of years. I sincerely hope that all the peoples of Holy Land will honour Mr. Husseini's spirit, which has always tried for moderation, reconciliation, and above all, a just peace.

The Hon. the Speaker: If no other senator wishes to speak, this inquiry is considered debated.

[*Translation*]

FOUNDATION TO FUND SUSTAINABLE DEVELOPMENT TECHNOLOGY

RESOLUTIONS OF STANDING COMMITTEES ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES AND NATIONAL FINANCE ON BILL C-4—MOTION TO FORWARD TO COMMONS—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator DeWare, seconded by the Honourable Senator Kinsella:
>
> That the Senate endorse and support the following statements from two of its Standing Committees in relation to Bill C-4, being An Act to establish a foundation to fund sustainable development technology.
>
> From the Fifth Report of the Standing Senate Committee on Energy, the Environment and Natural Resources the following statement:
>
> "The actions of the Government of Canada in creating a private sector corporation as a stand-in for the Foundation now proposed in Bill C-4, and the depositing of $100 million of taxpayer's money with that corporation, without the prior approval of Parliament, is an affront to members of both Houses of Parliament. The Committee requests that the Speaker of the Senate notify the Speaker of the House of Commons of the dismay and concern of the Senate with this circumvention of the parliamentary process."
>
> From the Eighth Report of the Standing Senate Committee on National Finance, being its Interim Report on the 2001-2002 Estimates, the Committee's comments on Bill C-4:
>
> "Senators wondered if this was an appropriate way to create such agencies and crown corporations. They questioned whether the government should have passed the bill before it advanced the funding. The members of the Committee condemn this process, which creates and funds a $100 million agency without prior Parliamentary approval."
>
> And that this Resolution be sent to the Speaker of the House of Commons so that he may acquaint the House of Commons with the Senate's views and conclusions on Bill C-4, being An Act to establish a foundation to fund sustainable development technology.—(*Honourable Senator Robichaud, P.C.*)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am pleased to address Bill C-4, to establish a foundation to fund sustainable development technology.

I appreciate this opportunity to clarify the facts regarding the establishment of the Canada Foundation for Sustainable Development Technology, and to demonstrate that the creation and funding of that initiative will comply with all parliamentary authorizations and practices.

Honourable senators, to briefly recap, you probably remember that, in the February 2000 budget, the Minister of Finance announced that $100 million would be earmarked for the Sustainable Development Technology Fund. It was then confirmed that an independent body promoting cooperation between the business world, universities, communities and governments would be considered to support the development and implementation of new technologies to reduce greenhouse gas emissions.

Honourable senators, as you know, there are various approaches to setting up independent bodies. I propose to tell you about these ways when I will resume the debate, which will allow us to move on to other issues that we must deal with before adjourning today.

On motion of Senator Robichaud, debate adjourned.

[*English*]

QUESTION OF PRIVILEGE

Hon. Anne C. Cools: Honourable senators, as indicated earlier, I gave both oral and written notice that I would be raising a question of privilege at this time today. I had said very clearly earlier that my question of privilege flows from the debates of the previous Thursday, November 8, 2001. The debates in question about which I am speaking fall on pages 1693 through to about 1696 of the *Debates of the Senate*. I think it constitutes a fair amount of time.

The situation grew out of my attempts, under the authority of rule 3, to ask leave to revert because, as was explained in the debate, I had been distracted by Senator LaPierre for a few seconds. I had been expecting Senator Prud'homme to be speaking. I looked around and I realized that not only was Senator Prud'homme not speaking, he was not in the chamber. At that point, I scrambled to my feet. The situation seemed to move quite smoothly. Essentially, I indicated that it was my inquiry, and that obviously I knew that I had a right of reply. I wanted to move the adjournment so I could make the reply at the next convenient time.

Moving from there, this apparently simple matter, which goes on daily in this place without comment, without remark, without notice, suddenly ballooned into a major debate. I am beginning to conclude that there is something about me, and any time I get to my feet it automatically inspires a certain degree of action. It is something that fascinates me, and perhaps we could look at a study of it some time. It might prove to be of interest.

My question goes to the point that privilege is a very important matter and our rights to speak are equally important. Somehow or other, rightly or wrongly, I feel — and I am prepared to be persuaded that I am wrong — that in the matter on Thursday, November 8, I was not treated fairly and properly, and certainly not in a manner that I think is accorded to the dignity of the Senate or to the dignity of any particular senator.

In addition to that, I would remind honourable senators of rule 44(1), which imposes on every single senator an obligation to uphold and defend privileges as a matter of obligation and also as a duty, and rule 44(1) also imposes it as a priority. I am speaking in a way that we can follow.

Having said that, and proceeding under rule 43, I am asking the Speaker of the Senate to make a finding of a case of *prima facie* privilege, and were he to do that I would be prepared to move a necessary motion.

Now, if we were to look at the debates on Thursday, we would begin very quickly to see the origins of my complaints. My complaints are essentially that I was thwarted in my attempt to preserve my right to reply as per rule 35, that I was thwarted in my right to speak to move an amendment, and also that I was thwarted to ask for leave of the Senate.

In addition, Senator Kinsella did the most curious thing in the debate and wrongly claimed that I had been absent when the order had been called. In point of fact, I was present, as anyone examining the record would be quickly able to see. I shall return to that in a moment.

•(1800)

I was quite present and I was also perturbed by the apparent confusion that seemed to dominate the debate, particularly on the meaning and application of the rules. A consequence of the confusion —

The Hon. the Speaker: Honourable senators, it being six of the clock, I am obliged to rise to observe that fact.

Is it the wish of honourable senators that I not see the clock?

Hon. Peter A. Stollery: Honourable senators, I should like permission to revert to Notices of Motions.

The Hon. the Speaker: Before anything can happen, honourable senators, we must deal with the matter of the time. Is it agreed that I not see the clock?

Hon. Senators: Agreed.

The Hon. the Speaker: The Honourable Senator Stollery wishes leave to revert. Senator Cools has the floor. However, I believe I know why, in terms of committee work, the Honourable Senator Stollery is asking for leave. I will give him an opportunity to make his request.

Senator Cools: His Honour cannot do that without asking me to yield the floor. If I were to be asked, I would consider it an act of generosity on my part.

The Hon. the Speaker: Perhaps we can deal with this as a matter of order. I believe the Chair can recognize someone rising to request leave. I have decided to recognize Senator Stollery and I do so now.

Debate suspended.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Peter A. Stollery: Honourable senators, with apologies for interrupting Senator Cools, with leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

> That the Standing Senate Committee on Foreign Affairs have power to sit while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

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

Motion agreed to.

Hon. Anne C. Cools: Honourable senators, a most unusual process has just happened. It is extraordinary and has set an extremely dangerous precedent, and I shall use it myself in the future to interrupt a senator who is speaking.

QUESTION OF PRIVILEGE

Hon. Anne C. Cools: As I was saying, honourable senators, there was much confusion on the meaning and the application of the rules, a result of which was that some senators were able to impose conditions on me in respect of my undoubted rights; conditions that were actually contrary to the rules. In addition, I found that the constant conversations between the Table officer and His Honour were distracting and disruptive. His Honour, I have no doubt, would be distressed, and I would understand why, if, as I was speaking to him, a Table officer were standing next to me prompting me and causing a certain amount of disturbance. I am raising the question as to why it is that the Table officers can prompt some senators and not others. That is a question perhaps we can decide or consider or even debate on another day.

Honourable senators, I wish to come to what I consider to be the crux of the matter. To do so, I should like to read to honourable senators a quotation from Erskine May.

We must be mindful that the Senate is a different institution from the House of Commons and the Speaker of the Senate is a totally different personage and has totally different authority from the Speaker of the House of Commons. I should like to place on the record a quotation from Erskine May, which has been used often by previous Speakers in this place. It is the 21st edition, found at page 433, dealing with the question of the preservation of order. Of course, Erskine May wrote in England, so he was speaking about the House of Lords.

> The preservation of order in the House and the maintenance of the rules of debate are the responsibility of the House itself, and therefore of all Lords who are present. All Lords have a duty to call attention to breaches of order or procedure. The Lord Speaker has no controlling powers. The Leader of the House —

— in Canada we say "Government Leader," but it is really the Senate leader —

> — has a special part to play in expressing the sense of the House and in drawing attention to transgressions of order.

Therefore, honourable senators, to come to the crux of the matter, it seems to me that we have to attempt to identify very carefully what are the duties, rights, obligations and privileges of senators in contradistinction to the duties, rights, privileges and obligations of the Speaker of the Senate, and, in addition to that, to contemplate the question of what are the duties and obligations of the Speaker of the Senate in respect of upholding the right of any senator to speak and to be able to exercise their rights under the Bill of Rights of 1689.

Honourable senators, what happened — and it was very interesting, as I was just saying — was that I rose and things seemed to move along. Then, at page 1693 of the *Debates of the Senate*, His Honour asked for a moment. That is fine. I give him 10 moments. Then down near the bottom of the page, he stated:

> Perhaps I am on weak ground. I would ask for interventions as a matter of order.

There is no such provision in our rules and no such capability in our rules to do any such thing. However, it was done.

The most striking thing of all, honourable senators, is that I asked for leave and got leave several times in the process of the debate, yet no one seemed to know and it did not seem to matter. I was just ignored. Senator Kinsella or someone else would rise to speak and they would go on again.

Honourable senators, my major point is that if we look at the debate on page 1694, we see that His Honour said:

> Senator Cools has requested leave to revert to Order No. 8, Inquiries. Is leave granted, honourable senators?

The response was:

> **Some Hon. Senators:** Agreed.

Leave was granted. It was perfectly crystal clear. Leave was granted. In point of fact, His Honour does not have to ask, "Is leave granted?" As a matter of fact, the seeking of leave is a matter among senators. In other words, a senator rises and says, "Honourable senators, will you grant me leave?" There is no need for any intervention whatsoever from His Honour. This is a new innovation that suddenly, it seems to me, has sprung out of the air. In any event, the fact of the matter is that leave was granted.

That was the second time. Leave was granted. At that, Honourable Senator Kinsella then sprung to his feet and made another intervention. It is very important that we understand that several paragraphs before, after I had explained very carefully that I had been here in the chamber, and after Senator LaPierre got to his feet and explained that he had distracted me, in point of fact Senator Kinsella said more than once:

> Honourable senators, if the honourable senator in whose name the motion was made wants to exercise the right that is provided for by rule 35, he or she must be in the chamber when the item is called.

Honourable senators, I was right here when the item was called. I understand that since then Senator Kinsella has been a bit zealous, and I can appreciate that, but he goes on to repeat it again.

•(1810)

No one said at the time that I was here present, even though I had said it myself before, and even though Senator LaPierre had said it. It is called "speak and be ignored."

Senator Kinsella continued:

> In the matter before us, honourable senators, the item not only was called; it was disposed of. The proceedings of the house this afternoon have gone far beyond this. It would require unanimous consent, it seems to me, to refer back to that item. We should be perfectly clear that senators must be present if they are to exercise the right provided for by rule 35.

Honourable senators, I was very present.

Following that, His Honour said:

> Senator Cools has requested leave to revert to Order No. 8, Inquiries. Is leave granted, honourable senators?
>
> **Some Hon. Senators:** Agreed.

Senator Kinsella was on his feet again. He said that he would be happy to give leave, but leave had already been given. He said he would be happy to give leave "provided that it is for a substantive contribution to the debate." I must say that if we imposed the condition that senators must make substantive interventions, many would fall far short. There are no such conditions. One cannot attempt to anticipate the content of what a person will say, and neither should we.

However, even though leave had been granted, it was essentially ignored and the debate continued, quite interminably, it seems to me. There was confusion as to whether I had the right of reply, when it was crystal clear to me all along that I had the right of reply. All I was trying to do was to exercise my right to take the adjournment in order that I could exercise my right of reply in due course.

In any event, it would be nice if this place could operate on a basis of fairness and balance and the understanding that unanimous consent is requested quite frequently here. As a matter of fact, I think it is requested too frequently. There was a period of time about a year ago, which I remember quite vividly, when the government operated most of the time on unanimous consent.

Having said that, it seems to me that something very wrong happened. If, as it would appear, I was sitting here in the chamber and the senator who was supposed to speak was not here and His Honour called "stand," it seems to me that with the same amount of effort His Honour could have looked at me and said: "Senator Cools, you have been distracted. Your item is being called and Senator Prud'homme is not here to speak to it." It seems to me that that would have been kinder, finer and wiser, and would have culminated in a nicer result.

Honourable senators, I have no doubt that my privileges were breached and that my efforts to speak were thwarted, conditions having been placed upon them. I am pleased to say that I did survive and, not only that, at the end of a rather convoluted exchange I succeeded in doing exactly what I had set out to do in the first place, which was perfectly consonant with the rules, that is, to move the adjournment in order to be able to respond.

Honourable senators, some of the finest people in the world work for senators and the Senate. I have never met more dedicated or noble people than those who are committed to this institution. However, I am very mindful that there is need for guidance in many fields. I belong to that group that was very saddened and disturbed some years ago when we used to hear the previous Speaker, the late Senator Molgat, refer to the Table officers as his "staff." The Table officers are not the personal staff of the Speaker of the Senate.

I refer honourable senators to the *Debates of the Senate*, page 339, November 6, 1997. The Speaker of the Senate, addressing a point of order, says:

> I did not hear anyone say "No." I have checked with my staff and they did not hear anything, either.

At that time, I discussed the matter with the relevant individuals and said that it was very unhealthy for the Speaker of the Senate to refer to the Table officers and the Clerk of the Senate as his staff. I thought that then, and I still think it now. It is something that we should look into.

I am requesting His Honour to look at what I said to determine whether I have established a prima facie case of privilege, bearing in mind that the Speaker of the Senate is just like an ordinary senator. Remember that the position of Speaker of the Senate was originally based on the Lord Chancellor but has changed dramatically. It has not developed as was anticipated. Remember that the Lord Chancellor was the keeper of the conscience of the king.

Honourable senators, I am prepared to sit down and give other senators the opportunity to speak. I reserve the right to respond to them.

The Hon. the Speaker: Do other senators wish to intervene on this matter of privilege?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to make three small points. First, I do not believe that a prima facie case of breach of privilege has been raised. Second, the *Debates of the Senate* speaks for itself. Third, with regard to the interpretation of rule 35, I maintain that, although a right is granted, that right can only be exercised if the senator is in the chamber. It is not vested somehow transcendentally beyond the chamber. There is nothing in the record, as I recall, that reference was made to any particular senator.

Hansard reads:

> Honourable senators, if the honourable senator in whose name the motion was made wants to exercise the right that is provided for by rule 35, he or she must be in the chamber when the item is called.

I think that is clear. The other thing is that, as I say, *res ipsa loquitur,* the *Debates of the Senate* speaks for itself.

Finally, rule 43(12) provides:

> The Speaker shall determine whether a *prima facie* case of privilege has been made out.

Much of what I heard in the assertion of a prima facie case of breach of privilege seems to indicate that it was the conduct of His Honour that breached the privilege, and now His Honour is being called upon, by rule 35, to judge his own actions. That part of the question of privilege that has been raised might put His Honour in a difficult position. However, I shall certainly abide by whatever His Honour finds.

Senator Cools: Honourable senators, I should like to respond to what Senator Kinsella just said. At the risk of being repetitious, I will state that I never claimed that rule 35 had application or vested an application beyond the Senate. I repeat that I was in the chamber when the order was called. I was distracted for a matter of seconds. I wish to clarify that for the record.

•(1820)

Rule 35 clearly establishes the right of a senator to respond in reply. All that I was trying to do was to reach back into the debate about 10 seconds or 15 seconds, because in point of fact nothing had happened. Both items had been stood.

Now to the last question that Senator Kinsella raised, I am prepared to give this some very deep thought and very sensitive thought. He said that the question raised is not so much to do with him as it is to do with His Honour. I will think about that for a split second because I truly do not want to cause anyone any difficulty. Since I might cause His Honour some difficulty, I should like to withdraw the question of privilege. I think this is something that should be proceeded with in another order and in another kind of a proceeding. Consider the matter withdrawn, honourable senators.

CANADIAN SECURITY INTELLIGENCE SERVICE

INQUIRY

Hon. Marcel Prud'homme rose pursuant to notice of June 14, 2001:

> That he will call the attention of the Senate to the latest public report for the year 2000 from the Canadian Security Intelligence Service.

He said: Honourable senators, I raised this question in June, if you remember, and I was hoping that some senators might have participated in view of the events that took place in September. I am not one of those who says the world changed forever after September 11. I draw this to the attention of my honourable friends and colleagues, especially the new senators, because it seems there are two groups of senators here. I will talk like a new senator to the new senators. I will be very brief, as I was in the two other matters.

We should pay just a little bit of attention to the Canadian Security Intelligence Service 2000 public report. Just read it. It is very small. Canadians who read our proceedings can get a copy by phoning 613-231-0100. The young, modern people who are on the internet can go to www.csis-scrs.gc.ca. I would hope that many Canadians will read the report.

I will not back off. I voted in 1984 against the creation of CSIS. I had a very interesting and lively discussion, as only Mr. Trudeau would like, on this issue. It was one of the last pieces of legislation. The Solicitor General then was the Honourable Mr. Caplan, and I disagreed totally with him. That does not mean and was never meant to say that I am against security.

I was of the opinion, and I am still of the opinion, that we should have modernized the Royal Canadian Mounted Police. They have served Canada so well in the past and are serving Canada so well today. We should modernize, leaving aside some of their activities for the provinces, so they can really become our great Canadian force for modern problems, one of them being terrorism, the other one being white collar crime. That was my opinion in 1984. I have not changed opinions since.

I will work in January on a bill that will die, but I will do what a senator should do and put forward ideas for reflection by honourable senators who are interested in moving forward in a modern society, in an immense, changing society. It will be food for thought, and the ideas will not be all mine. A collection of intelligent people in security matters will be helping me in this matter.

For those honourable senators who may think that I could be soft on crime and terrorism, I draw to their attention that I was faster than the Liberals when Senator Kelly, our esteemed colleague and expert on questions of terrorism and all of these modern unfortunate sicknesses, put to the Senate a motion to continue his study on terrorism. The last time, that motion was seconded by me. I was faster. I know some were very disappointed and were almost about to say no, but I was honoured to second that motion to show where I stood.

I was a volunteer on that committee during the summer. It is tough enough to be a committee member and sit when the Senate is not sitting, let alone be a volunteer when the Senate is not sitting. I did the same thing when the Standing Senate Committee on Veterans Affairs was looking at the War Museum issue. Some people were going to take over the museum, and our military would have lost it.

I walked out of the hospital and volunteered with Senator Kelly again. There were five committee members. Three women represented the Liberal Party: Senator Chalifoux, who I did not know, Senator Forest from Edmonton and Senator Cools. The two Conservatives were Senator Jessiman from Winnipeg, who was on his way out, and our very good friend the chairman, Senator Phillips, from the province of Prince Edward Island.

We did a good job. In my view, we saved the War Museum for the veterans. If some people want to have another kind of museum, let them come openly and say so, and we will act according to what is in the best interests of Canada.

I make these comments to bring to the attention of my colleagues and Canadians that they should read this report. If the report had been read attentively, we may not have had a pre-study on Bill C-36 on terrorism. That bill is now being debated in the House of Commons, following which it will come the Senate. When this bill comes back, I will recommend reading the report of the security services for the year 2000. You have time. It is only half a page. It is very interesting reading in view of the debate we will have eventually on Bill C-36.

I have said enough to draw to attention to this report.

Hon. Aurélien Gill (The Hon. The Acting Speaker): If no other senator wishes to speak, honourable senators, this matter is considered debated.

•(1830)

NOMINATION OF HONORARY CITIZENS

INQUIRY—DEBATE ADJOURNED

Hon. Marcel Prud'homme rose pursuant to notice of June 14, 2001:

> That he will call the attention of the Senate to the way in which, in the future, honorary Canadian citizens should be named and national days of remembrance proclaimed for individuals or events.

[*Translation*]

The Hon. the Acting Speaker: Honourable Senator Cools, we have reached Inquiry No. 26 on the *Order Paper*. Do you wish to intervene on this point?

[*English*]

Hon. Anne C. Cools: Honourable senators, the subject matter here before us is the phenomenon of the definition and creation of honorary Canadian citizens. The question that the inquiry poses is the mode and the manner in which honorary Canadian citizenship should be named and in which national days of remembrance should be proclaimed.

[*Translation*]

The Hon. the Acting Speaker: Since Inquiry No. 26 stands in the name of Senator Prud'homme, he must introduce it first and then Senator Cools may speak.

[*English*]

Senator Prud'homme: Of course, on June 14, 2001, I gave notice of this inquiry when I said that I would call the attention of the Senate, et cetera.

Later that day, I participated in the debate to declare Nelson Mandela an honorary citizen of Canada, and as such spoke a little about what honorary citizenship means.

Senator Cools would like to say a few words, so I will let her say what she has to say.

Senator Cools: Honourable senators, I have agreed to respond to this.

Honourable senators, yesterday many of us attended the very moving event where Mr. Mandela was received as an honorary citizen of Canada.

As many honourable senators would know, I had moved the motion to make Mr. Mandela an honorary Canadian citizen at the request of some of my Toronto colleagues, who had asked me to pilot the motion through the Senate.

We can say with great pride that yesterday was a very touching moment. A video shown to the guests contained many scenes of events in South Africa. For me, it was a touching moment because I was deeply reminded, in a poignant way, of the impact and the effect that those events had on me as a relatively young woman who was shocked that such carnage and injustice could go on in the world. I was much more naive in those days.

My personal feelings about Mr. Mandela revolve around the fact that his greatness rests not so much in what he did but in the being and the essence of the person that he is and in what he prevented from happening. Mackenzie King once said that the greatness of a leader is not only in what he does but also in what he stops others from doing. To my mind, the greatness of Mr. Mandela has a lot to do with the fact that, but for this one man, this one individual as a binding force for South Africa, the carnage and the bloodshed would have been unspeakable. That, I think, is the primary reason why so many people have been drawn into an almost adulation of this individual.

I was very touched yesterday as well as I saw the frailty of the man. I guess age will claim us all. I saw a man who was beginning to grow a little tired, but I would say that he is a man whose pilgrimage has been an amazing example for all of us.

I think the essential point here to which Senator Prud'homme wants to draw attention is the manner in which such choices are made. The British have many ways of honouring people. One of them is knighthood — which is an ancient method of honouring people. In Canada, we do not have an equivalent set of honours, even though I sometimes wish we did. The fact of the matter is that it was the feeling of a large number of members of Parliament that Mr. Mandela should be honoured in a very special way beyond the Order of Canada, beyond the adulation. The people who had this idea looked to the concept of honorary citizenship.

The history of honorary citizenship in this country is amazingly limited. Accordingly, such honorary citizenship has been conferred only on one other occasion, on Mr. Raoul Wallenberg.

However you cut it, the whole phenomenon of honours is a very important matter. There is something in the heart of human beings that wants to be honoured by peers and by the sovereign. In the instance of Mr. Mandela, it is a most interesting honour because he is one of the few human beings in the world who could ever have claimed to be a sovereign, to the extent he was a sovereign, as the president of South Africa was, and now he is an ex-sovereign.

At some point in time, perhaps we could begin, as a Senate chamber, to look at the question of how we choose those on whom we confer the phenomenon of honorary citizenship. While we are at that, we should also look at the whole phenomenon of how we confer honours, how we choose them, and what kinds of honours are most fitting to any nation or any country.

On motion of Senator Banks, debate adjourned.

BIOLOGICAL WEAPONS AND BIOWARFARE

INQUIRY—DEBATE ADJOURNED

Hon. Sheila Finestone rose pursuant to notice of November 6, 2001:

That she will call the attention of the Senate to the issue of biological weapons and bio-warfare.

She said: Honourable senators, thank you for sitting here for a long show. I want to address the question of biological weapons and biowarfare. We see the headlines in the newspapers today about Syria, Libya, Sudan and Iran, with specific highlighting of Iraq defying the bioweapons ban of the United States.

I would like to adjourn the debate in my name so that we can take a look at the fact that we are in a race with the dark side of biomedicine and science.

On motion of Senator Finestone, debate adjourned.

[*Translation*]

INFORMATION COMMISSIONER

MOTION TO RECEIVE IN COMMITTEE OF THE WHOLE—DEBATE ADJOURNED

Hon. Noël A. Kinsella (Deputy Leader of the Opposition) pursuant to notice of June 13, 2001, moved:

That the Senate do resolve itself into a Committee of the Whole, on Wednesday June 20, 2001, at a time convenient to the Government and the Information Commissioner in order to receive the Information Commissioner, Mr. John Reid, P.C., for the purpose of discussing the most recent Annual Report of the Commission, including the call in that report for whistleblowing legislation.

That television cameras be authorized in the Chamber to broadcast the proceedings of the Committee of the Whole, with the least possible disruption of the proceedings.

On motion of Senator Stratton, for Senator Lynch-Staunton, debate adjourned.

The Senate adjourned until Wednesday, November 21, at 1:30 p.m.

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Available from Public Works and Government Services Canada —Publishing Ottawa, Canada K1A 0S9