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(HANSARD)

Wednesday, November 28, 2001

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, November 28, 2001

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

Prayers.

SENATORS' STATEMENTS

NATIONAL AIDS AWARENESS WEEK

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, this week is National AIDS Awareness Week. As we all know, AIDS stands for acquired immune deficiency syndrome, a syndrome that was originally identified in 1981 in the United States.

Thanks to an intensive public health education initiative around the world, we are now aware that AIDS is the result of the compromise of the immune system by the human immunodeficiency virus, HIV. While many of us, especially in the developed world, are aware of the methods of transmission of HIV, it is estimated that there are 36 million people infected with the virus today, 25 million of them living in Africa alone. By the year 2005, estimates are that it will cost U.S. $25 billion to contain the HIV/AIDS epidemic.

[*Translation*]

Unfortunately, the vast majority of infected people, as much as 90 per cent, are in developing countries, where access to drugs, information on the disease and means of prevention are limited, if not totally non-existent.

Drugs to keep the virus under control were discovered in 1996, but by far the majority of people with HIV have not be able to benefit from this medical breakthrough.

[*English*]

However, there are signs of hope and much progress has been made on a global scale. At a meeting of the United Nations a few months ago, many large multinational companies pledged their financial support to combatting AIDS within their own companies and communities. At the 2001 Summit of the G8, Canada played a key role in creating a global AIDS and health fund. Canada has committed $150 million to this program and our government has provided the necessary leadership to establish a focus group on Africa.

Stephen Lewis, former Canadian Ambassador to the United Nations, has been appointed Secretary General/Special Envoy for AIDS in Africa because of his unique qualifications and knowledge in addressing this issue. The World Bank and the International Monetary Fund are involved in this initiative and will coordinate the distribution of funds and ensure they are directed to regions that are most affected by the virus. Although we do not yet have a cure for AIDS, we can be proud that Canada has been in the forefront of establishing an effective response to this health crisis.

I hope that all of us can take heart in Mr. Lewis's comments in June of this year when he stated that, together with many others, he feels "a cautious but insistent sense of hope that if a breakthrough is to be made, then this is the moment in time."

REFORM OF THE HOUSE OF LORDS

Hon. Lois M. Wilson: Honourable senators, there came into my hands last week a document from the U.K. called "The House of Lords: Completing the Reform." Senators will remember that reform of the House of Lords in the U.K. began two years ago with the removal of the rights of hereditary peers to an automatic seat in Parliament. At the same time, the government established a royal commission which has now recommended a fully reformed upper house. I found some of the recommendations very creative and concluded that Mother England is about to leapfrog over the Canadian Senate. Let me speak of only a few of the most interesting and provocative changes that are suggested.

The functions of both Houses remain the same, but there is a recommendation that the composition of the upper house be changed to enable it to fulfil its distinctive function. The report rejects the idea of an elected second chamber and instead opts for an equality of numbers to the elected and to independently appointed persons.

The upper house would be representative of the country as a whole, broadly representative of the main parties' relative voting strength as reflected in the previous general election. The new appointment system would reach out to those from a wider range of backgrounds and would control the political makeup of the upper house more equitably. The regions would all have a guaranteed place while there would be an appointments commission to see that women, ethnic minorities and faith communities are also properly represented. There would be a significant minority — 20 per cent — of independent members selected who have no commitments for any particular party affiliation but are selected to bring to Parliament the expertise or experience that they have garnered as leaders in a wide range of national endeavours. Such experience cannot replace a direct electoral mandate, but makes a valuable addition to the expertise of Parliament as a whole, the report states.

•(1340)

It goes on to say that no one party should be able to dominate the upper chamber by voting power alone. The government's proposals for balance between the politically affiliated members and retention of a further independent element mean that future governments, of whatever persuasion, will not be able to force through their programs by voting power in the upper house.

A radical change in the way the composition of the upper house is determined is to recommend that appointments be made not by the Prime Minister but through the establishment of a statutory appointments commission accountable to Parliament alone. The length of term for members would be for a Parliament or for a certain number of parliamentary cycles up to 5, 10 or 15 years, although the government thinks that 15 years is an extremely long time. The report says that the only other Western second chamber with a large component of life members is the Canadian Senate, with its retirement age of 75, which in practice limits the terms of members to an inflexible degree that the U.K. government would not wish to impose on a reformed upper house.

I commend this to the house for serious study. To access it, honourable senators may phone the Library of Parliament.

[*Translation*]

THE DEPORTATION OF ACADIANS

Hon. Gerald J. Comeau: Honourable senators, yesterday the members of the House of Commons voted on a motion to recognize the harm done to the Acadians by the 1755-1763 deportation.

This resolution was rejected by a vote of 182 to 59. Unfortunately, all of the Acadians in the party in power voted against it. It is true that it was introduced by a member of the Bloc Québécois, a separatist, and I realize that this is a thorn in the side of federalist MPs. Yet the outcome has been that a chamber of Parliament now has on its record that it has refused to recognize the mistreatment of the Acadians in the 18th century. The sponsor of the motion ought to have been aware of the harm a rejection would bring, and if he was really dedicated to the cause of the Acadians, should have withdrawn the motion instead of seeing it negatived. I thank all members of the House of Commons who voted in favour.

[*English*]

RETURN OF LEADER OF THE GOVERNMENT

Hon. J. Michael Forrestall: Honourable senators, I am glad to see that the Leader of the Government is back in her seat today.

ROUTINE PROCEEDINGS

CANADA NATIONAL MARINE CONSERVATION AREAS BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-10, respecting the national marine conservation areas of Canada.

Bill read first time.

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

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

AGRICULTURE AND FORESTRY

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

Hon. Leonard J. Gustafson: Honourable senators, I give notice that on Thursday, November 29, 2001, I will move:

> That the Standing Senate Committee on Agriculture and Forestry have the power to sit on Wednesday, December 5, 2001, at 3:30 p.m. to hear from the Minister of International Trade, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

OFFICIAL REPORT

NOTICE OF MOTION TO REPLACE HEADING "INFLUENCE ON HATE CRIMES OF BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE"

Hon. Anne C. Cools: Honourable senators, pursuant to rules 56(1) and 58(1)(i), I hereby give notice that I shall move:

That the *Debates of the Senate* of Thursday, November 22, 2001, in Senators' Statements, at page 1757, in the heading "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage" be corrected by replacing that heading with a more accurate heading, being "Informing the Senate of the Tragic Murder of a Homosexual Man in Vancouver's Stanley Park," and also that all other corollary Senate records, including the *Debates of the Senate* Internet version, be also corrected in this manner because:

> (a) it is desirable and honourable that Senators during Senate debate uphold the principled practice that Senators and Senate debate ought not be linked to any murder or violent anti-social behaviour; and because

(b) it is desirable and honourable that there be no attempt to connect a terrible and tragic murder to a Senate debate or to any Senator's participation in a Senate debate because such connection is offensive to the extreme; and because

(c) it is desirable and honourable that for the proper functioning of the proceedings under Senators' Statements that all Senators uphold Rule 22(4) of the *Rules of the Senate* which states in part:

> In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate; and because

(d) it is desirable and honourable that all honourable senators uphold the high standard of virtue that as Canadians we all share a common and collective humanity such that any person's death diminishes us all, for we are all connected.

QUESTION PERIOD

TRANSPORT

PROPOSED EXEMPTION TO FIREARMS ACT TO ALLOW UNITED STATES AIR MARSHALS TO CARRY WEAPONS IN CANADA

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, my question arises from a statement made last week my Senator Finestone when she was introducing Bill C-38, to amend the Air Canada Public Participation Act. In her formal presentation, which is reprinted in *Debates of the Senate* of November 22, on page 1765, she said, in referring to the government:

> It has also made the necessary provisions to allow armed U.S. air marshals on U.S. flights to enter Canada without difficulty.

During the pre-study on Bill C-36, the committee was told that one of the clauses in the bill is an amendment to the Firearms Act, which would allow exemptions regarding the carrying of firearms, including those carried by sky marshals. In other words, if the bill is passed as such, the government would allow an exemption to the Firearms Act to a number of those who carry firearms, including those who are known as sky marshals, coming from abroad and landing in Canada.

From what authority did the government derive allowing sky marshals on U.S. flights to enter Canada when the parliamentary authority has yet to be given?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, since this is a confusing issue, I hope that I am given the opportunity to be fulsome in my reply because I think it is critical.

The authority is an indirect one and differs as to whether it is a Canadian plane going from Canada outside of the country or whether it is an American plane coming to Canada. For example, the Canadian Aviation Security Regulations presently in place under already passed legislation provide that certain individuals — police, for example — may carry weapons on airplanes generally for escort purposes.

•(1350)

The Aeronautics Act also allows exemptions to regulations to be made by the minister under section 5.9(2). Prior to September 11, such an exemption was made by the RCMP officers on Air Canada flights to the Ronald Reagan National Airport in Washington.

Bill C-36, and only Bill C-36, would authorize an American air marshal to come to Canada with weapons.

Senator Lynch-Staunton: Honourable senators, I will have to read what the minister has just said. I am somewhat confused. The minister's last statement was that Bill C-36 would allow armed U.S. sky marshals to come into Canada. Senator Finestone has told us that that is already happening.

Senator Finestone: That was a mistake.

Senator Lynch-Staunton: If the senator was improperly informed, then I would like someone to deny the fact that armed U.S. air marshals are coming into Canada under a provision of Bill C-36 that has yet to be approved by Parliament.

Senator Prud'homme: Shame!

Senator Carstairs: I think I can give the honourable senator that clarification. Bill C-36 allows U.S. officers, with weapons, to come into Canada. My understanding is that U.S. officers are not coming into Canada armed at the present time. However, should we pass Bill C-36, they will have that authority.

With respect to armed RCMP officers going into the Reagan airport, because flights were not allowed to land at Reagan airport unless armed marshals were on board, that authority is derived from two areas: the Canadian Aviation Security Regulations and the Aeronautics Act.

Senator Lynch-Staunton: In the last two cases, the question would be: Do American authorities allow armed Canadian air marshals to arrive at American airports? However, that is a totally different question.

Honourable Senator Finestone read a speech that obviously was approved by the department that is sponsoring this bill. The minister has contradicted that statement. The government is in contradiction with itself. This chamber needs to know who is right. Is it the department that is proposing the bill that Senator Finestone has sponsored and whose words she read, or the minister here, who says, "No, there are no armed U.S. sky marshals landing in Canada at this time, and none will until Bill C-36 is passed, unchanged, as we have it before the House of Commons now."

Senator Carstairs: Honourable senators, I can only assure you that following the interchange between the Honourable Senator Finestone and honourable senators in the chamber last week, particularly with Senator Lynch-Staunton, I asked for clarification on the matter, and it is that clarification from which I read today, to provide honourable senators with the most up-to-date information.

EFFECT OF DISCHARGING FIREARM ON AIRPLANE IN FLIGHT

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, could the minister inform this house whether Canadian authorities have done any testing to ascertain the effect of discharging a firearm at 33,000 feet that would penetrate the skin of a large aircraft under air pressure?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know of any specific testing, but I will inquire and return with that information.

CARRIAGE OF FIREARMS BY AIR MARSHALS ON FLIGHTS ORIGINATING IN FOREIGN COUNTRIES

Hon. Marcel Prud'homme: Would the minister deny today that no foreign airline is authorized to be in our Canadian airport with arms?

Hon. Sharon Carstairs (Leader of the Government): I am sorry, but I cannot give the honourable senator that particular answer with respect to any foreign airline. I was given the information vis-à-vis the United States and the sky marshal situation. Rather than go out onto dangerous ground, I would much rather obtain that information and report back to honourable senators.

Senator Prud'homme: To help out the honourable senator in her reflection and search, would she report back to us, in particular, how long El Al Israel Airlines has been authorized to have armed guards in our Canadian airports?

Senator Forrestall: Since 1936.

Senator Carstairs: I will add that question to the more general question that the honourable senator first asked.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— CHANGES TO STATEMENT OF REQUIREMENTS— IMPACT ON COMPANIES COMPETING FOR CONTRACT

Hon. J. Michael Forrestall: Honourable senators, I have a question concerning process as well.

Why is the government changing the basic vehicle requirement specifications for the proposed Maritime helicopter now from revision No. 4 to revision No. 5 when already we have heard the military complaining that Sea Kings may have to fly until 2015?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the answer that I have for the honourable senator is one that he has been afforded on other occasions, but I am more than willing to repeat it this afternoon: There are no changes being made to the statement of requirement for the new Maritime helicopters. There are some changes to the more detailed technical specifications, but they are based on military analysis, extensive statistical research and realistic force planning scenarios. The SOR has not been changed.

Senator Forrestall: The minister has said to me on many occasions that we have a clear difference of opinion. I always thought that since we learned to read and write in the same province, we understood that words had to have the same meaning.

Has the government considered the fact, and a fact it is, that it will likely face at least two lawsuits when it emerges that they have rightly or wrongly favoured one firm over another in this process by issuing a new basic vehicle requirement spec and as a result of the impact of further delays in acquiring a Sea King replacement?

Senator Carstairs: Honourable senators, I thank the honourable senator for that question. Indeed, the honourable senator and I were educated within the same province. Just for the honourable senator's information, on Saturday, in Halifax, I went to visit some of the nuns who taught me at the Convent of the Sacred Heart, in order to pay my respects for their wonderful education and certainly their clear instruction in developing my ability to read.

As to the honourable senator's specific question, there may indeed be lawsuits that are generated from those companies that lose this bid. This is probably one of the most significant bids on military equipment for many years to come. Not only will these helicopters be chosen by Canada, there is a good chance they will then be chosen by a great many of our NATO allies. Within the debate and discussion of the purchase of helicopters, this is a very big deal.

One cannot anticipate whether there will be lawsuits at any time. However, one is realistic enough to realize that, given the hype and publicity that the bidders have been entering into over the last several years, a lawsuit would not be a great surprise.

SEA KING HELICOPTERS—PROGRAMS FOR EXTENSION OF LIFE OF AIRCRAFT

Hon. J. Michael Forrestall: I am glad to see that the minister is at least beginning to recognize that there is worldwide interest in what is happening here and what is happening with the development of replacement helicopters for seaborne operation. I wish to point out to the minister that that has been a viable understanding and awareness for some 15 or 20 years on the part of those who follow the issue reasonably closely or who have responsibility for this file.

Has the government contracted with Industrial Marine Products, in Halifax — perhaps the best maintainer of Sea Kings in the world — to study support issues for the life extension of the Sea Kings past 2005?

•(1400)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator says that I am just beginning to realize the helicopter issue. How could anyone sit in this chamber day after day and not be aware of the helicopter issue?

Honourable senators, at the end of the last session I asked my staff to count the number of questions I had been asked by the Honourable Senator Forrestall on this very important point. I understand he asked 155 questions. Having been a teacher for 20 years, I certainly know that 155 questions — albeit not from a student but someone on the other side — makes it a significant issue. I have been aware of the issue for some time.

With respect to the specific question about whether a contract has been let, I do not have the answer. I will seek that information and report back as soon as possible.

Senator Forrestall: Honourable senators, what concrete steps is the government taking now with regard to the $50 million annually that have already been put into upgrades and the millions of dollars that we spend in maintenance to extend the life of the Sea King to 2005? What new programs does the government have to maintain the Sea King until at least 2010 or possibly 2015?

I can tell honourable senators that I monitor the Web site, and from that, I get the clear message that the government does not care.

What programs are there in place to keep the Sea Kings alive? What modifications and updates have been made? Even the master mechanics at IMP are not infallible. This machine is wearing out. How will we keep it afloat for another 10 years?

Senator Carstairs: Let us be realistic, honourable senators. Senator Forrestall is well aware of the $50 million that has been spent to upgrade the Sea Kings. In fact, I think he himself made the statement — although it may have been Senator Graham — that probably the only original part is the identification number of the Sea King, that nearly everything else has been changed.

It must be made clear that it is still the government's desire to take delivery of the first maritime helicopter by December 2005. Clearly, if that happens — as we certainly hope it will — some of the Sea Kings will need to remain operational past 2005. A study done by DND engineering in 1994 concluded that by undertaking a number of modifications the Sea King could be extended to 2010. That is why the decision was made to spend the $50 million on the upgrades. Most of the recommended modifications have now been completed.

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

EFFECT OF SETTLEMENT OF LAWSUIT BY EMPLOYEE ON FUTURE HIRING OF VISIBLE MINORITIES

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate. It relates to the settlement of a lawsuit against CIDA. Canadians were shocked to learn last week that CIDA, the multibillion dollar Canadian government agency, reached an out-of-court settlement with Ranjit Perera of Sri Lanka. The case arose out of charges of discrimination on grounds of racism against Blacks and visible minorities in that agency.

The minister will know that Justice James Hugessen of the Federal Court of Canada granted an order whereby Mr. Perera will receive a cash settlement, a letter of regret signed by CIDA President Len Good, $185,000 in court costs and an increase of $35,000 a year in his salary.

Does this government plan to monitor CIDA in order to restore the confidence of Mr. Perera and other Canadians that this government agency will diversify its managerial positions and hire more visible minorities?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is clear from its policy that the Government of Canada is extremely concerned about the employment of members of visible minorities and others that we have specifically targeted, such as Aboriginal people, who are highly underrepresented in our public service, and the handicapped, who are to an ever greater degree disadvantaged within our public service. The government is monitoring all those efforts, not only for employability but also for promotion and growth within the employment opportunities afforded them.

Senator Oliver: Honourable senators, my question was specifically about CIDA. It has been long recognized that there has been latent racism in CIDA for many years. This particular case took more than 10 years to be resolved and the resolution of it resulted in a substantial settlement, which is a clear indication that there was racism against visible minorities in that department.

Specifically what will the government do to ensure that the insidious and still present problem in CIDA will be monitored and resolved?

Senator Carstairs: Honourable senators, I deeply regret it if the problem does still exist. I will express clearly to the minister that it is the view of the Honourable Senator Oliver that the problem still exists and that extra special attention should be brought to the CIDA organization.

[*Translation*]

OFFICIAL LANGUAGES

AID FOR LINGUISTIC MINORITIES

Hon. Jean-Robert Gauthier: Honourable senators, my question is for the Leader of the Government in the Senate. The French-language media have talked a lot recently about the latest study commissioned by the Commissioner of Official Languages, Dyane Adam, entitled "The Governance of Canada's Official Language Minorities: A Preliminary Study." The study is critical of government funding for linguistic minorities.

To quote the researchers, Linda Cardinal and Marie-Ève Hudon, of the University of Ottawa:

> Since the data show that the government's new procedures were primarily a way of having the decrease in public funding managed by others...

The approximate cost for the fiscal year ending on March 31, 2000 — without taking inflation into account — is practically the same as it was 23 years ago, on March 31, 1978. The federal government invests less than 0.5 per cent of federal spending annually in official languages. In terms of Canada's population, this represents approximately $17 per capita. This is a very modest expenditure to maintain linguistic duality.

Could the minister tell us if she will be taking the appropriate steps to make her colleagues in cabinet aware of the urgent need for a change in direction and in the attitude of the government toward official language communities?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. It is an important one that highlights the commitment that the government made in its last Speech from the Throne strongly affirming its commitment to Canada's linguistic duality, which is at the very heart of Canadian identify and which constitutes a key element of our vibrant society. That is also why the Honourable Stéphane Dion has been appointed to form special relationships with other ministers in order to demonstrate that commitment. He is working closely with the Honourable Sheila Copps to develop an action plan to enhance government actions. We anticipate that a proposed action plan will be received in cabinet very soon.

[*Translation*]

Senator Gauthier: Language rights are exercised according to their objectives, and the courts have been saying so for the past several years. The fact of the matter is that without financial means it is impossible to advance the cause of language rights in Canada. Money must be invested in official languages, and support given to official language communities living in a minority situation. Could the minister advocate for the minorities with the Minister of Finance so he will provide financial resources to the official language communities in his December 10 budget?

[*English*]

Senator Carstairs: Honourable senators, I am more than pleased to advocate on behalf of minority language and the need for services, as the honourable senator knows full well.

•(1410)

In Western Canada, the most vibrant example of a francophone community is within the city of Winnipeg: the active community of St. Boniface. The preservation of their language in all of its fullness is an important cause for me. I can assure the honourable senator that it will be part of my lobbying efforts to the Minister of Finance.

[*Translation*]

Senator Gauthier: The minister responsible for the coordination of official languages programs, Stéphane Dion, was appointed eight months ago. Approximately three months ago, before a parliamentary committee, he promised an action plan. Could the minister ask him when we can expect this action plan, on which he has been working for the past eight months, so that we can have an idea of where we are going?

[*English*]

Senator Carstairs: Honourable senators, I wish to tell the Honourable Senator Gauthier that it is my understanding, in looking at documents to which I am privy, that that action plan will be presented to cabinet very shortly.

Senator Prud'homme: Good.

HEALTH

STATUS OF LEGISLATION TO ADDRESS HUMAN TISSUE AND STEM CELL RESEARCH

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. Recent attention to cloning of human embryos has stimulated new interest on the entire subject of the use of human tissues and stem cells for research. It has been eight years since the Baird Commission on New Reproductive Technologies submitted its two-volume report calling for urgent measures to be taken by the federal government. In addition, the Canadian Institutes of Health Research is working on recommendations and guidelines for stem cell research and related work.

It is my impression that there is quite good legislation in preparation to deal with this entire subject. Could the Leader of the Government please tell me, first, at what stage this legislation is, and, second, what measures are being taken to bring it forward for parliamentary consideration and debate?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his very important question. We have become very aware this week of how quickly technology is advancing in this field.

Canada's draft legislation is ready. It is presently before the Standing Committee on Health in the other place. I must tell honourable senators that this is a battle I lost. I actually wanted it to come to this house because I thought we had the knowledge and expertise here to deal with it, but the decision was that it would be sent to the Health Committee instead of to our Standing Senate Committee on Social Affairs, Science and Technology. However, I was assured we would be given ample time to study it when it came back in formal legislation.

The draft legislation is available. If the honourable senator does not have it, I will certainly make it available to him.

FOREIGN AFFAIRS

UNITED STATES—GOVERNMENT POLICY ON ENLARGEMENT OF CURRENT CAMPAIGN IN AFGHANISTAN TO INCLUDE IRAQ

Hon. Douglas Roche: Honourable senators, I have a question for the Leader of the Government in the Senate. On Monday, U.S. President Bush warned Saddam Hussein that if he did not admit United Nations inspectors to determine if Iraq is developing nuclear, chemical or biological weapons, he would face the consequences.

Given that Canada also wants assurance that Iraq is not developing weapons of mass destruction, what is the policy of the Government of Canada on the enlargement of the present war against the Taliban in Afghanistan in the name of stamping out terrorism? Would Canada remain a part of the U.S.-led coalition if it enlarges the bombing campaign to include Iraq?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Prime Minister has been very clear that the enlargement of any present campaign to Iraq would have to be based on proof that, in fact, Iraq was engaged in the terrorist activities that we all know took place on September 11.

GOVERNMENT POLICY ON FOSTERING DIALOGUE ON TERRORISM WITH CERTAIN COUNTRIES

Hon. Douglas Roche: Several days ago, the United Nations Humanitarian Coordinator for Iraq, Mr. Hans von Sponeck, was in Ottawa discussing these issues. Among other things, he encouraged the Government of Canada to engage in and enlarge the dialogue with Iraq and specifically to encourage King Abdullah and Mr. Amr Moussa of the Arab League to more aggressively pursue the role of negotiators between Kuwait, Saudi Arabia and Iraq.

What is the Canadian government's position in respect of fostering international dialogue that could, at this stage, head off military action later on?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, obviously the Government of Canada is not opposed to dialogue, particularly dialogue that might prevent future hostilities. That is something to which the Government of Canada has always been committed.

It is important to bear in mind that Canada has supported the United Nations sanctions as the best way to achieve our disarmament objectives in Iraq. That commitment has not changed.

THE SENATE

TABLING OF REGULATIONS TO ACCOMPANY BILL TO AMEND INTERNATIONAL BOUNDARY WATERS TREATY ACT

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate. Last night, in the Foreign Affairs Committee, the Minister of Foreign Affairs told us that because of the importance of the regulatory provisions of Bill C-6, he had ensured that the draft regulations were tabled with the committees in advance of the adoption of the bill so that members of the committee could see what was anticipated and what the government was intending to do.

In fact, to my knowledge, the draft regulations have not been tabled in the Senate. They were not with the bill when we received it. Will the minister ensure that the regulations that the minister referred to are in fact tabled in accordance with the rules?

Senator Corbin: They are in the briefing notes.

Senator Carney: They may be in the briefing notes, but they were not tabled in the Senate.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable minister indicated that the draft regulations had been provided to committee members. Briefing books are given to the members of each committee. The information, therefore, is accessible by senators who were engaged in the detailed study of the bill.

However, if the honourable senator wishes the draft regulations to be distributed to all senators, and they are available in both official languages, then I would undertake to do that by tomorrow.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable Senators, I have the honour to table in this House a response to a question raised in the Senate on November 8, 2001, by Senator Kinsella regarding the list of terrorists and terrorist groups.

INTELLIGENCE AND SECURITY

LIST OF TERRORISTS AND TERRORIST GROUPS

(Response to question raised by Hon. Noël A. Kinsella on November 8, 2001)

The *United Nations Suppression of Terrorism Regulations* implement key measures contained in a resolution adopted by the United Nations Security Council on September 28, 2001.

The regulations establish a list of persons or groups for which there are reasonable grounds to believe they have committed, attempted to commit or participated in a terrorist act or facilitated the commission of a terrorist act.

The list includes names identified by the United Nations Security Council Committee Concerning Afghanistan, as well as names identified by the government as being associated with terrorist activity.

No person in Canada or Canadian outside of Canada will be permitted to knowingly deal directly or indirectly with any assets owned or controlled by a listed person; or provide or collect funds for the use of listed persons.

There are 315 listed persons under the United Nations Suppression of Terrorism Regulations.

It should be noted that this list is fluid as names are being added by the United Nations Security Council Committee Concerning Afghanistan (automatic incorporation) and through regulatory amendment.

•(1420)

ORDERS OF THE DAY

TRANSPORTATION APPEAL TRIBUNAL OF CANADA BILL

THIRD READING

Hon. Aurélien Gill moved the third reading of Bill C-34, to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased to address, at third reading, Bill C-34, to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other acts.

•(1420)

This bill was closely scrutinized by the honourable senators sitting on the Standing Committee on Transport and Communications. The committee considered the bill in a thorough and in-depth manner. I want to thank committee members who gave their input and support to this bill, as demonstrated by the questions asked during consideration of the bill.

[*English*]

Members met with officials of Transport Canada as well as key transportation representatives from the private sector.

[*Translation*]

One of the main commitments made by this government is to rethink the role of the state in the transportation sector. This means modernizing the federal legislation on transport and reviewing the way we administer and enforce our laws in the interests of Canadians.

As mentioned by Transport Canada officials, extensive consultations were carried out across the country at the end of 1997 and at the beginning of 1998 in the marine and railway sectors to modernize the legislation governing them.

The discussion papers resulting from these consultations all support the creation of an independent review body with expertise in the transportation sector. Establishing this tribunal would be an integral part of legislative reform in the transportation sector. This is achieved in two ways with Bill C-34. First, it provides for review of the use of administrative enforcement measures by an expert body completely separate from the department. Second, the legislation promotes consistent government treatment of persons engaged in federally regulated transportation activities in the rail, marine and airline sectors.

I cannot emphasize strongly enough that this bill is mainly about reviewing administrative enforcement measures, which are very different from judicial enforcement measures. Judicial measures are taken in the case of much more serious regulatory violations requiring criminal proceedings and possible criminal sanctions. Here, we are talking about prison sentences and fines of hundreds of thousands, even millions, of dollars. Administrative measures have to do with the concept of natural justice and procedural fairness. This means that someone against whom an administrative measure is going to be taken has the right to know the grounds for the decision, that they have recourse, if they wish, and that they have the right for this review to be held before an independent third party.

[*English*]

I believe that Bill C-34 would establish a review mechanism characterized by the following key underlying principles: independence, expertise, fairness, expediency, informality, accessibility and economy.

[*Translation*]

Bill C-34 has two key components. First, the establishment of the transportation appeal tribunal of Canada and, second, the outlining of the tribunal's jurisdiction and decision-making authority by amending six pieces of transportation legislation: the Aeronautics Act, the Railway Safety Act, the Canada Shipping Act, the Canada Transportation Act, the Marine Transportation Security Act and Bill C-14, the Canada Shipping Act, 2001.

The establishment of this new improved tribunal involves the transformation of the existing Civil Aviation Tribunal into a multi-modal transportation tribunal giving the rail, marine and aviation sectors access to an independent review body. This bill deals with the machinery aspects of establishing this tribunal such as membership appointments, duties and qualifications and the review and appeal hearing process. It also includes transitional housekeeping provisions to ensure that the work of the Civil Aviation Tribunal continues smoothly into the new body.

With respect to the tribunal's independence, after carefully examining the bill and hearing the testimony of the chairperson of the current tribunal, I believe that this important principle has been maintained and strengthened. The transportation appeal tribunal of Canada would thus provide an independent recourse mechanism for many cases where right now there is no review mechanism other than that within Transport Canada.

As for the expertise of the members appointed to this tribunal, I agree with my colleagues that this is crucial to the tribunal's credibility.

The legislation makes relevant transportation expertise a mandatory criteria. This would involve separate rosters of part-time rail, marine and civil aviation members. Within each roster there would be a wide variety of expertise: commercial, mechanical, legal and medical, to name a few. This means that a review hearing dealing with a rail matter would be heard by a member with rail expertise, a medical issue would be heard by a member with medical expertise, and so on. This tribunal would not only have an impressive array of relevant transportation expertise, but I will take the liberty of adding, honourable senators, it would come at an impressively low cost. The roster of part-time members would be paid only when hearing a case.

[*English*]

The jurisdiction of the tribunal, in terms of the types of administrative enforcement decisions it could review, is set out in the amendments to the six transportation acts that I mentioned previously.

[*Translation*]

The tribunal would be able to review six different types of administrative enforcement decisions found in varying degrees in the six pieces of transportation legislation, including administrative monetary penalties, refusals to remove enforcement notations, railway orders, a variety of licensing decisions, notices of default in relation to assurances of compliance, and decisions surrounding screening officer designations.

There was a very thorough examination of the powers of the tribunal. Overall, the powers of the Transport Appeal Tribunal of Canada would depend on the nature of the administrative enforcement decision being reviewed. Where the enforcement action is substantially punitive in nature, the tribunal would be able to substitute its decision for that of the department. For example, a review of an administrative monetary penalty. However, where the enforcement action has more to do with competencies and qualifications to hold licences, public interest or other safety considerations, the tribunal would generally be authorized only to confirm the department's decision or refer the matter back for reconsideration.

It is not the intent of the legislation to dilute the fundamental safety and security responsibilities of the Minister of Transport under the various transportation acts. I am sure that the Transport Appeal Tribunal of Canada could provide an efficient and effective review. I am confident that it could benefit from the same levels of support as are currently available to the Civil Aviation Tribunal. I encourage all honourable senators to support Bill C-34.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

•(1430)

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

The Hon. Fernand Robichaud (Deputy Leader of the Government) moved the third reading of Bill C-31, to amend the Export Development Act and to make consequential amendments to other acts.

On motion of Senator Oliver, debate adjourned.

[*English*]

AIR CANADA PUBLIC PARTICIPATION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Finestone, P.C., seconded by the Honourable Senator Milne, for the second reading of Bill C-38, to amend the Air Canada Public Participation Act.

Hon. David Tkachuk: Honourable senators, it is my pleasure today to respond to the motion for the second reading of Bill C-38.

Last week, I listened with interest to Senator Finestone's speech on second reading, as well as to the questions asked of her afterward. I think that, inadvertently, she may have answered the most salient question posed by the Honourable Senator Murray at the end of her speech. Senator Murray asked:

> Honourable senators, will Senator Finestone tell us whether this is the sum total of the government's policy in terms of restoring or creating a competitive air industry in Canada?

Senator Murray knows how to get to the heart of the matter.

Not to be outdone, Senator Finestone, perhaps anticipating Senator Murray's question, said at the beginning of her speech:

> The bill does not try to solve any of the longer-term issues relating to Air Canada.

Like most of the government's legislation, this bill solves no one's problem. Rather, it is simply part of the government's never-ending smokescreen which attempts to leave the impression that the government is trying to fix a problem, a problem of its own making.

When I inquired during Question Period about the role of the government in the problems of the air industry in Canada, Senator Carstairs said that it was bizarre thinking on my part; and that the Government of Canada had little to do with Air Canada's problems and that, rather, they were the result of failing economic conditions and the events of September 11. She inferred that it had more to do with privatization than the policy of this Liberal government.

The bill has a few intentions, as explained to us by Senator Finestone, one of which is to remove the 15 per cent limit for a single shareholder. Another is to remove the resulting sections put in place to enforce that restriction; and another has to do with certain amendments to the Firearms Act. The government did not use this opportunity to raise foreign ownership from 25 per cent to 49 per cent, which I am sure it will do at a future time when, again, it will be too little too late.

The bill is being rushed through both Houses. "Government by executive order," I call it, leaving parliamentarians to act as rubber stamps. I asked my friend Senator Oliver, who is the Deputy Chair of the Standing Senate Committee on Transport and Communications, to ensure that Minister Collenette appears before the committee before they do any work on the bill.

This bill only returns that part of the corporate policy to normal. Getting rid of the whole act is what we should be considering, not this piecemeal approach. That might be too much to expect, however, because to do that the government would actually have to think through its air transportation policy. Members of Parliament could use this bill as an opportunity to debate our air transportation policy and to try to articulate some kind of air policy that would provide long-term direction to the carriers and to the country.

Both Senator Finestone and Minister Collenette in the other place used the word "integration" to describe the previous attempts to merge the two airlines, that is, Canadian Airlines and Air Canada, which, I might add, was a deliberate policy of this Liberal government. The way they put it in their speeches, it was as if it were just some small act that took place a couple of years ago and, "Gee whiz, now we have all these problems."

We have in the Senate the Honourable Ross Fitzpatrick who was on the board of directors of Canadian Airlines at that time, along with a former employee in the Prime Minister's Office, Jean Carle of Apex Security fame. I am sure both these men could shed some light on the problems facing the air industry in Canada today.

As board members, they might also enlighten us as to why they think Minister Collenette and Onex were in lockstep. Onex was seemingly prepared to launch a takeover of both airlines, something a company usually takes a long time to prepare. Yet it is important to remember that Onex was not in the airline industry. Thus, they would not have had to announce their intention, unless they had already acquired the requisite number of shares, something which securities legislation forces them to announce. That means they would have been acquiring shares of both airlines for some time prior to the announcement by Minister Collenette to suspend the application of the Competition Act as it applied to airlines in Canada.

If honourable senators remember correctly, when the minister lifted the application of the act, Onex obviously had the required number of shares to continue. Thereafter, they had to make an announcement that they were taking over both airlines, which leaves me a bit suspicious.

Normally, companies do not reveal their takeover intentions until they have purchased, as discreetly as possible, a certain number of shares, in order to prevent them from paying a high over the market price for those shares. Perhaps it is possible that I am wrong and Onex announced its intentions out of the goodness of its heart as good Canadians to save Canadian Airlines. Perhaps that is what they did.

I will now go through the relevant history that has led us to the present situation. In September 1999, the Quebec Superior Court declared Onex's proposal against the law. As a result, Onex withdrew its proposal. In October 1999, Minister Collenette tabled the policy framework for airline restructuring in Canada that retained a 25 per cent foreign content rule. By this time, the Canadian airline industry was reeling from the new merger policy rules and the minister's actions with respect to mergers.

Seeing the significance of the minister's actions, the Competition Bureau recommended allowing foreign carriers into Canada. Shortly thereafter, Air Canada, a little concerned about this proposal, commenced a counter bid to take over Canadian Airlines. This action was driven by the government's inability to state a coherent policy. No one had a clue as to what was going on. No one in the airline industry knew what was going on. Likewise, neither Parliament nor the Canadian people knew what was going on.

In December 1999, both Houses of Parliament reported on the examination of airline restructuring. The House recommended that foreign ownership be raised to 49 per cent and that individual ownership be raised to 15 per cent of the shares of an airline. The Senate Transport Committee also recommended 49 per cent for foreign ownership and 20 per cent for individuals. The government did not see fit to legislate either of the recommendations of both Houses of Parliament.

Instead, they moved the limit to 15 per cent in June 2000, well after Air Canada had taken over a debt-ridden company that someone else could have got for nothing or, at the very least, at a deeply discounted price after its bankruptcy. That is what should have happened to Canadian Airlines. It was an airline that had been saved from bankruptcy once. Through its meddling, the government was attempting to do it again.

•(1440)

By July of 2000, Air Canada reported a loss of $221 million and prepared its workforce for job cuts and reduced hours. The government, being Liberal and still believing jobs could be legislated, burdened Air Canada with all kinds of obligations that, in the end, made life even more difficult for the company and absolutely horrendous for the paying public. By their actions, the government created chaos in the industry and infected the healthy carrier with the debts of the sick carrier, leaving the predator as sick as the victim. They just could not leave well enough alone because at heart they do not believe in the market or its forces. The rest of the history on how we got to this point is equally traumatizing, for it shows how little in the way of policy has been articulated.

I understand even now that another new bill is being put forward, another small step without anyone knowing the big picture. I predict there will be a number of reactive bills rather than the positive regulatory and policy framework that all airlines would be thankful for in this country.

What is the purpose of the 25 per cent rule for foreign investment? It is a political purpose. Foreign investment could easily be at 49 per cent. Travellers want competitive and reliable service to travel or to ship goods and rarely check on the ownership or share structure of a particular airline. The Dutch national carrier, KLM from the Netherlands, which everyone thinks is the Dutch national carrier, is not owned only by Dutch shareholders, but they are not in a majority position. Truth be told, Americans own the largest number of shares in KLM. Yet it operates as their national carrier with a brand name that gives it an enviable position in the marketplace. That is what Air Canada has — a brand name that is very powerful and that the government should be using rather than hurting.

Do we really need this bill at all and have different rules for headquarters and for bilingualism? Air Canada is a bilingual airline. Why are all the other airlines not bilingual airlines? They are not. Only Air Canada is a bilingual airline. Either they are all bilingual airlines or none of them should be bilingual airlines. Air Canada is mandated to have its headquarters in Montreal, and there is nothing wrong with that, but why should any company be forced to have its headquarters in a particular place? That is a decision for the company to make and not for legislators to make.

Air Canada is, in fact, burdened with a regulatory framework that is more burdensome than when it was a Crown corporation. It is time to change all that. Let the carriers be in the business of air travel. Let us treat them all equally. Let us examine the regulatory framework on a consultative basis. Let us, the government, be in the business of providing a regulatory framework that works for consumers and business. Let us stop tinkering around the edges and confusing the airline business community. Let us put in place a competition policy that provides real competition in which the public and the airline industry have confidence. Let us not be a party to the present policy that is overseeing the demise of a once proud industry.

Honourable senators, our party supports this bill but urges the government to present an airline industry bill that would deal with the myriad of issues that continue to plague our industry.

Hon. Tommy Banks: Honourable senators, would the Honourable Senator Tkachuk entertain a question?

Senator Tkachuk: Sure.

Senator Banks: The honourable senator referred to competition a moment ago. Would that be foreign competition?

Senator Tkachuk: It could be foreign competition.

The Hon. the Speaker: Honourable senators, before recognizing Senator Finestone, I wish to inform all honourable senators that if Senator Finestone speaks now, her speech will have the effect of closing the debate on the motion for second reading of this bill.

Hon. Sheila Finestone: Honourable senators, I have a question with respect to the interest that our colleague has demonstrated in putting forward some interesting thoughts. Is the honourable senator hopeful that the Department of Communications will read his suggestions and perhaps take some incentive from what he has put forward?

In the meantime, I want to make one observation or comment. There seems to have been some confusion about my original remarks. I should like to bring to the attention of honourable senators, in particular the Honourable Senator John Lynch-Staunton, the observations that I did make in the speech that I presented here when I introduced the bill in this chamber. That is found on page 1765 of the Thursday, November 22, 2001 *Debates of the Senate*, where I brought to the attention of this house that in order to re-establish Air Canada's important flying rights into the Ronald Reagan National Airport, a unique geographic location, the government had authorized the presence of armed RCMP officers on Air Canada flights to the United States capital. As I said at that time:

> It has also made the necessary provisions to allow armed U.S. marshals on U.S. flights to enter Canada without difficulty.

Perhaps I should have added that these provisions are found in Bill C-36 and are not in effect as yet. We are waiting for the authority to be granted, and we are not anticipating the decisions of Parliament prior to Bill C-36 being passed. I think that honourable senators know that we worked hard on Bill C-36 and that we are anxious to see what kind of changes are made.

Senator Tkachuk: I promise to bring that to the attention of Senator John Lynch-Staunton.

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 Finestone, bill referred to the Standing Senate Committee on Transport and Communications.

[*Translation*]

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption 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. Pierre Claude Nolin: Honourable senators, I rise today to speak during consideration of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs on the Youth Criminal Justice Act. I should like to mention right away that I will be voting in support of the report, and I invite you to vote with me.

That being said, I will divide my time into two sections. First, I will attempt to explain briefly the amendment proposed by the committee for clause 110 of Bill C-7, regarding the publication of the identity of a young offender.

Then, I will deal with the issue of the importance of the role of this chamber in the consideration and adoption of legislation that will have a significant impact on the respect of the rights, needs and greater interests of millions of young Canadians. Let us proceed with the amendment proposed for clause 110 of Bill C-7.

Honourable senators, for several years, debate surrounding the publication of the identity of young offenders has dealt with legitimate but contradictory values, which are the very foundation of the youth criminal justice system.

•(1450)

On the one hand, there is recognition of the importance of encouraging the rehabilitation of a young offender by avoiding the potentially negative impact of publishing details about his case or his identity. On the other hand, it is also realized that greater openness and transparency on the part of youth courts increases the trust of the public and victims in an open and responsible justice system separate from that for adults.

Right now, the provisions of the Young Offenders Act with respect to the privacy of young offenders strike a certain balance between these two values. Section 38 of the act prohibits the publication of information serving to identify a young offender. Certain exceptions apply, however. For instance, section 38.(1.5) provides that an attorney general, a Crown attorney, or even a peace officer may request that a youth court make an order permitting the applicant to identify a young offender, having regard to the following three factors: the young person has been found guilty of an offence involving serious personal injury, the young person poses a risk of serious harm to society, or the publication of his identity is relevant to the avoidance of that risk. In these three instances, the burden of proving the need to publish the identity of the young person falls to the Crown. In addition, if a young offender is sent to an adult court for trial, the protection offered by section 38 no longer applies and the young person's identity will therefore be published. This is the system under the current Young Offenders Act.

Honourable senators, Bill C-7 significantly changes the mechanism I have just described, that found in section 38 of the Young Offenders Act. It is an amendment that will have a negative impact on many adolescents, and here is why.

Subclause 110.(1) of this legislation maintains the ban on publishing the name of a young person or any other information related to a young person. However, subclause 110.(2) provides that this does not apply in the case of a young person who has received an adult sentence, a youth sentence for murder, aggravated sexual assault, manslaughter, or a youth sentence for a serious violent offence or an adult sentence after three serious violent offences. This will ring a bell for those who are watching the American legal scene. If a young person is covered by the four categories I have just mentioned, his identity is automatically published as is currently the case in the adult penal system. Is this an improvement over the current provisions of the law? Personally — and this is shared by the majority of the members of your committee — I do not think so. It is certainly no improvement over existing provisions. This is why we have decided to amend the bill.

Honourable senators, my concerns in this regard do not relate to the publication of the identity of the young offenders in the four cases set out in article 110. As I showed earlier, section 38 of the Young Offenders Act already provides for this. However, Bill C-7 no longer assigns the prosecutor the burden of proving that publication would benefit society. There is a significant difference involved.

Honourable senators, this amendment worries me greatly, for two reasons. First, a provision whereby there is automatic disclosure of the identity of a young offender runs counter to the preamble of this very same bill, Bill C-7. It also contradicts the principles of rehabilitation and reintegration, as well as the existence of a distinct criminal justice system for youth, one that is different from the adult system as set out in clause 3 of this same legislation.

This is even more worrisome when one considers that a young offender could be sentenced as an adult at as early an age as 14 years. As Justice Binnie of the Supreme Court pointed out less than one year ago, in paragraph 14 of the *Queen v. F.N.* ruling, and I quote:

> Stigmatization or premature 'labelling' of a young offender still in his or her formative years is well understood as a problem in the juvenile justice system. A young person once stigmatized as a lawbreaker may, unless given help and redirection, render the stigma a self-fulfilling prophecy. In the long run, society is best protected by preventing recurrence.

In the case at hand, it seems clear that the principle of the protection of society in the short term takes precedence over the principles of rehabilitation and reintegration. However, if clause 110.(2) is passed with the current wording, Bill C-7 will seriously jeopardize the chances for the rehabilitation and reintegration of adolescents, which will not ensure the protection of society in the long term.

Second, several witnesses who appeared before the Standing Senate Committee on Legal and Constitutional Affairs were concerned that clause 110.2(2) of Bill C-7 might not comply with Canada's international obligations on young people's privacy. Indeed, Article 40 of the United Nations Convention on the Rights of the Child provides that, in order to promote the reintegration of a young person who is accused or found guilty of a criminal offence, state parties must ensure that his privacy is fully respected at all stages of the proceedings. Similarly, rule 8 of the United Nations Minimum Rules for the Administration of Juvenile Justice, commonly known as the Beijing Rules, provides, and I quote:

> No information that may lead to the identification of a juvenile offender shall be published.

These rules, which were adopted by the UN General Assembly in 1985, establish the minimum criteria, the threshold for the administration of justice for youth. According to a witness heard by the committee, Jean Trépanier, who is a well-known criminologist at the University of Montreal, the provisions of Bill C-7 on the publication of the identity of young offenders could pose a problem, considering Canada's international obligations. In the evidence he gave before the committee on October 31, he said:

> The possibility of publishing names in such cases is, in fact, contrary to the spirit of these rules.

He was referring to the rules that I just mentioned. A little further in his testimony, he said:

> In general, I think that the spirit of these UN instruments is much closer to the general spirit of the Young Offenders Act than to the bill, which is closer to traditional criminal law.

•(1500)

A brief from the Commission des droits de la personne et des droits de la jeunesse du Québec concerning Bill C-7 corroborates Mr. Trépanier's statements. According to the commission:

> These increasing exceptions to the principle of confidentiality constitute major deviations from the rules of international law governing the treatment of minors in conflict with the law.

Honourable senators, for these two reasons it is therefore necessary to amend clause 110.(2), if only in order to attain the objectives of Bill C-7 and to comply with our international commitments. To that end, the committee report recommends the adoption of an amendment to the effect that the publication ban defined in clause 110.(1) would not apply in the cases set out in clause (2). On request by the Crown, the youth court would judge that the public interest would be better served as a result. Publication of the identity of a young offender would, therefore, no longer be automatic, but at the discretion of the court.

During clause-by-clause consideration, some felt that this was a redundant amendment, because clause 75.(3) of Bill C-7 already gives the court that discretion. I will deal with that objection, if I may. Under this provision, a judge would have the possibility of banning publication, but the burden of requesting this would fall upon the young offender himself or herself.

If we take into account the principles underlying Bill C-7, the provisions of the Canadian Charter of Rights and Freedoms and our international commitments, can we really impose such a reversal in the burden of proof on an adolescent? The amendment proposed in clause 110 re-establishes the scheme currently in effect under the Young Offenders Act and no longer places the burden of proof on young persons.

In addition, as subclause 75.(3) is found in the section of Bill C-7 that concerns adult sentencing, it may not readily be concluded that this judiciary discretion applies as well to adolescents receiving a youth sentence set out in another part of the bill.

Honourable senators, in this context, the amendment proposed in subclause 100.(2) will permit the return of a certain balance between long-term protection of society and a young offender's best chances for rehabilitation.

I would first, briefly — from the heart — like to address the role of this house within Canada's parliamentary system. I hope I will get the attention of those who appear to be listening but are reading and those who are reading and not listening to me.

The Hon. the Speaker *pro tempore***:** Honourable senators, the time allotted to Senator Nolin has run out.

The Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I certainly agree to grant five more minutes to Senator Nolin, but I do not agree to then proceed with questions.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted for Senator Nolin to continue?

Hon. Senators: Agreed.

Senator Nolin: My comments regard the legislative power of the Senate, if we do indeed have one, and the legislative power of committees. I am referring to this famous jewel that we so cherish, this marvellous institution that we promote at every opportunity we have, in front of auditoriums full of students, professors, professionals and Canadians interested in, or curious about, the Canadian parliamentary system and the specific role of our institution.

Allow me to speak about this jewel. Our colleague Senator Pearson made the following heartfelt remarks during the committee deliberations.

[*English*]

> If we amend the bill and it goes to the House of Commons, the whole issue will arise again. Then we will get back into the issue of public opinion. We in the Senate are admirable, but we are not elected. Therefore, while we are responsible for many constituencies of various sorts, which is to both our advantage and disadvantage, it does limit the sense I have at least of being able to do everything we would want.
>
> I do not know whether I expressed that well, but that is my challenge: We can only go so far ahead of where the public is prepared to go.

[*Translation*]

Honourable senators, I am very concerned by the honest statement made in good faith by Senator Pearson. If she is right, this is a far-reaching issue and it means that, for all intents and purposes, the legislative power of this institution, which is specifically mentioned in the Canadian Constitution, does not exist. It is a masquerade and this is serious. A masquerade almost implies a fraud. Thus, those who knowingly take part in this masquerade — those who are involved in criminal law or who work under the Criminal Code know what it means — do so with malicious intent. The Senate, senators, the government, government ministers and public servants are all knowingly taking part in this masquerade.

What are senators ashamed of? I am not ashamed of anything. I must admit that it is easier to say this when one sits in the opposition. It is harder for the government to make the same statement. This explains Senator Pearson's heartfelt remarks. Some of us are ashamed to admit that we refuse — and I mean it — for partisan reasons, to make an informed and wise use of the independence that we enjoy. Some are ashamed of that. But why be ashamed? No one in the Langevin Building can take that independence away from us. Senators sit in the Senate until age 75. What are they afraid of?

The report that we have before us is the result of a consensus. As a Quebecer, I am pleased with the existing act and so are all the legal stakeholders in my province who deal either directly or indirectly with young offenders. These people told us not to change anything, because the current system works well. If the government wants to make minor changes, fine, but do not touch the system.

I began my examination of this bill with that attitude. After hearing a number of witnesses, I realized that the other Canadian provinces wanted some changes. This report is the result of a consensus.

Honourable senators, I would ask for two additional minutes to complete my remarks.

The Hon. the Speaker *pro tempore***:** Honourable senators, is leave granted for two additional minutes for Senator Nolin?

Hon. Senators: Agreed.

•(1510)

Senator Nolin: The report before the Senate is the product of a consensus and is an attempt to correct certain shortcomings. As a Quebecer, I agreed to take part in this undertaking, which I would almost describe as patching up a bill. An examination of its principles — you will read the report — reveals that they are shaky.

Honourable senators, I will tell you very honestly that I refuse to be a part of this masquerade. We heard from 60 witnesses. Think about it for two minutes. Leaving out the officials and the minister, there were 55 individuals who travelled from Montreal, Toronto and elsewhere. These people, in good faith, appeared before us and asked us to amend the bill. We listened to them. Never were they told that it was highly unlikely that this bill would be amended.

Honourable senators, I am telling you the way I feel today because I am sure that some of you must have felt the same way. You are simply uncomfortable saying so. There is no need to be ashamed! Be real senators! You were certainly not appointed to sit back and not exercise your legislative power. I urge you to exercise that power. There is still time to do something, to offer young Canadians the best of themselves.

On motion of Senator Moore, debate adjourned.

The Senate adjourned until Thursday, November 29, 2001, at 1:30 p.m.

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