Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 75

OFFICIAL REPORT
(HANSARD)

Thursday, November 29, 2001

THE HONOURABLES ROSE-MARIE LOSIER-COOL
SPEAKER *PRO TEMPORE*

CONTENTS

(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

Thursday, November 29, 2001

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

Prayers.

SENATOR'S STATEMENT

THE HONOURABLE SHEILA FINESTONE, P.C.

CONGRATULATIONS ON TENURE AS CHAIR OF CANADIAN GROUP OF INTER-PARLIAMENTARY UNION

Hon. Joan Fraser: Honourable senators, as many of you know, a few moments ago Senator Finestone concluded a long and illustrious career as Chair of the Canadian Group of the Inter-Parliamentary Union.

Today, she received a letter from Anders B. Johnsson, the Secretary-General of the Inter-Parliamentary Union. I should like it to be on the Senate record. He writes the following:

> I had hoped that the session of the Executive Committee of the IPU in mid-December would have provided an opportunity for the members of the Committee and my colleagues to bid you farewell as you leave Parliament after a long and distinguished career. Recent circumstances have, however, dictated otherwise and I am therefore sending you this message.
>
> It has been a particular pleasure to work closely with you as a member of the IPU Executive Committee. Many of your colleagues would wish to join me in expressing appreciation of your clear-sighted guidance at a time when the Union is facing new and particularly demanding challenges.
>
> More generally, under your dynamic leadership, the Canadian Delegation to the IPU has developed a very high profile. With the particular flair you demonstrated from the very start in mastering the IPU's arcane procedures and practices, you were quickly recognised as one of the Union's most prominent and influential figures. The organization owes you a debt of gratitude for all you have done to promote the causes it espouses.

[*Translation*]

> You have every right to be proud of your remarkable contribution to the rise of the organization. During the 1980s, you were a driving force behind the action of the IPU in promoting equality and partnership between men and women. You were one of the principle architects of the structures put in place at the time to ensure long-term action in this area. Your drive behind the setting up and organization of the meeting of parliamentary women and its coordinating committee was vital. I add my voice to that of the many parliamentary women who have paid homage in Ouagadougou to your exceptional career...
>
> Within Canada as within the IPU, you have always promoted the fight on behalf of the most vulnerable. You led the way by encouraging the IPU to make parliamentarians aware of the dangers of the mines and the need to eliminate them... Many people and organizations, including the IPU, will continue to want to draw on your experience and talent. I hope we will be able to turn to you in the future.

[*English*]

> On a more personal note, I will certainly miss your uncanny knack of always calling a spade a spade. You never shy away from difficult issues and you speak your mind in a most refreshing manner. Just one more reason to be grateful for all you have done for the IPU!

ROUTINE PROCEEDINGS

INTERNATIONAL BOUNDARY WATERS TREATY ACT

BILL TO AMEND—REGULATIONS TABLED

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I wish to table the international boundary water regulations, which were in draft form and presented to all members of the committee studying Bill C-6, but at the request of Senator Carney, she wanted it tabled in the chamber. I want to make it clear that the minister in his statements did not say that they had been tabled in the Senate chamber. However, I am quite pleased to do so this afternoon.

CHAIRMAN OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

POSITION OF ETHICS COUNSELLOR ON POSSIBLE CONFLICT OF INTEREST IN STUDY ON STATE OF HEALTH CARE SYSTEM TABLED

Hon. Michael Kirby: Honourable senators, I have had translated the letter from the Ethics Counsellor that in my Senator's Statement of Tuesday, I said I would table in the Senate once it was available in both official languages. With leave of the Senate, I should like to table it now.

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

Hon. Senators: Agreed.

REVIEW OF REFERENDUM REGULATION PROPOSED BY CHIEF ELECTORAL OFFICER

REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE TABLED

Hon. Lorna Milne: Honourable senators, I have the honour to table the eleventh report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with the proposed referendum regulations adapting the Canada Elections Act for the purpose of a referendum.

ABORIGINAL PEOPLES

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Thelma J. Chalifoux, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

FIFTH REPORT

Your Committee, which was authorized by the Senate on Thursday, September 27, 2001, to examine and report upon issues affecting urban Aboriginal youth in Canada. In particular, the Committee shall be authorized to examine access, provision and delivery of services; policy and jurisdictional issues; employment and education; access to economic opportunities; youth participation and empowerment; and other related matters; and to present its final report no later than June 28, 2002, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX
Chair

(*For text of appendix, see today's* Journals of the Senate, *Appendix "A", p. 1036.)*

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

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

• (1340)

NATIONAL SECURITY AND DEFENCE

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Colin Kenny, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on National Security and Defence has the honour to present its

THIRD REPORT

Your Committee was authorized by the Senate on May 31, 2001, to conduct an introductory survey of the major security and defence issues facing Canada with a view to preparing a detailed work plan for future comprehensive studies.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget application submitted was printed in the *Journals of the Senate* of June 7, 2001. On June 11, 2001, the Senate approved the release of $100,500 to the Committee and on November 6, 2001 the Senate approved the release of $95,500 to the Committee.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

COLIN KENNY
Chair

(*For text of appendix, see today's* Journals of the Senate, *Appendix "B", p. 1042.)*

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

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

[*Translation*]

ILLEGAL DRUGS

BUDGET—REPORT OF SPECIAL COMMITTEE PRESENTED

Hon. Pierre Claude Nolin, Chair of the Special Committee on Illegal Drugs, presented the following report:

Thursday, November 29, 2001

The Special Committee on Illegal Drugs has the honour to present its

THIRD REPORT

Your Committee was authorized by the Senate on March 15, 2001, to reassess Canada's anti-drug legislation and policies.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget application submitted was printed in the *Journals of the Senate* of May 10, 2001. On May 16, 2001, the Senate approved the release of $98,500 to the Committee. The Senate subsequently approved the release of an additional $120,000 to the Committee on June 14, 2001.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

PIERRE CLAUDE NOLIN
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "C", p. 1043*.)

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

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

ANTI-TERRORISM BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism.

Bill read first time.

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

Hon. Fernand Robichaud (Deputy Leader of the Government): Honorable senators, with leave of the Senate, later this day.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(*f*), the Honourable Senator Robichaud moved, seconded by the Honourable Senator Poulin, that this bill be put on Orders of the Day for second reading later this day.

Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: Honourable senators, I thought the Deputy Leader of the Government in the Senate was going to ask for leave to move immediately to second reading of this bill. He seems to want to do so a little later. He was so kind as to consult me on this. I will perhaps have changed my mind since this morning. If the Deputy Leader of the Government wishes to proceed to this item, he might ask for leave to do so rather than returning to it later today.

Senator Robichaud: Honourable senators, I understand that honourable senators have given leave to move to second reading of Bill C-36. The cooperation of all honourable senators is appreciated. Normally, when we want to proceed to second reading of a bill without having to wait a whole day, it is done later on the same day, after Government Business on the Order Paper. I believe that Senator Prud'homme understands that this is the way we normally do things, and I thank him for his cooperation.

[*English*]

Senator Prud'homme: With consent of the Senate, we can do it now. I told the deputy leader clearly that I would oppose going to second reading, but at lunchtime I was elected by my colleagues, through a secret ballot, to return to the IPU. That has put me in a good mood, so I will give my consent right now to move to second reading.

The Hon. the Speaker *pro tempore***:** Leave having been granted, the item will be the placed on the Orders of the Day for consideration later today.

• (1350)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Reports from Standing or Special Committees:

Hon. Nicholas W. Taylor, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, November 29, 2001

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

NINTH REPORT

Your Committee was authorized by the Senate on March 1st, 2001, to examine such issues as may arise from time to time relating to energy, the environment and natural resources.

Pursuant to section 2:07 of the Procedural Guidelines for the Financial Operation of Senate Committees, the budget application submitted was printed in the Journals of the Senate of March 29, 2001. On April 3, 2001, the Senate approved the release of $162,820 to the Committee. The Senate subsequently approved the release of an additional $125,000 to the Committee on June 12, 2001.

The report of the Standing Committee on Internal Economy, Budgets and Administration recommending the release of additional funds is appended to this report.

Respectfully submitted,

NICHOLAS W. TAYLOR
Chair

(*For text of appendix, see today's* Journals of the Senate, *Appendix "D", p. 1044.)*

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

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE PRESENTED

Hon. Richard H. Kroft, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, November 29, 2001

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

NINTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2001-2002.

Banking, Trade and Commerce (Legislation)	
Professional and Other Services	$ 22,200
Transport and Communications	$ 0
Other Expenditures	$ 0
Total	$ 22,200
Energy and Natural Resources (Legislation)	
Professional and Other Services	$ 15,000
Transport and Communications	$ 5,000
Other Expenditures	$ 0
Total	$ 20,000
National Finance (Legislation)	
Professional and Other Services	$ 3,000
Transport and Communications	$ 0
Other Expenditures	$ 0
Total	$ 3,000
Social Affairs (Legislation)	
Professional and Other Services	$ 2,500
Transport and Communications	$ 5,500
Other Expenditures	$ 500
Total	$ 8,500

RICHARD H. KROFT
Chair

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

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF STATE OF HEALTH CARE SYSTEM

Hon. Michael Kirby: Honourable senators, I give notice that on Tuesday next, December 4, 2001, I will move:

That, notwithstanding the Order of the Senate adopted on March 1, 2001, the Standing Senate Committee on Social Affairs, Science and Technology, which was authorized to examine and report on the state of the health care system in Canada, be empowered to present its final report no later than June 30, 2003.

[*Translation*]

BUDGET 2001

STATEMENT BY MINISTER OF FINANCE—NOTICE OF INQUIRY

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I hereby give notice that, on Tuesday, December 11, 2001, I will call the attention of the Senate to the budget to be presented by the Minister of Finance in the House of Commons on December 10, 2001.

[*English*]

QUESTION PERIOD

SECRETARY OF STATE FOR MULTICULTURALISM

ANTI-TERRORISM BILL—GOVERNMENT PLAN IN RESPONSE TO MINORITY GROUPS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my first question is to the Leader of the Government in the Senate. The minister's colleague, the Secretary of State for Multiculturalism, Hedy Fry, announced on CPAC television last night that the government had a five-point plan to deal with affairs of the minority communities across Canada about the implementation of Bill C-36.

In order to ensure that this is not an imaginary plan, could the Leader of the Government have this five-point plan tabled in the Senate?

An Hon. Senator: A burning question!

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am not sure that it is "a burning question," but it is an extremely important question.

I must confess to the honourable senator, however, that I do not have that five-point plan. I was not aware of the five-point plan, but I will make contact immediately with the minister and obtain such plan and make it available. Clearly, it is an important part of the debate that will take place on Bill C-36.

Senator Kinsella: I thank the honourable minister for that.

CREDENTIALS OF MINISTER AS MEDICAL DOCTOR

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, in several biographical publications, the Secretary of State for Multiculturalism, Minister Fry, has indicated that she has the degree MD, Doctor of Medicine, after her name. It is also indicated that she studied medicine at the Royal College of Surgeons in Ireland. However, when one goes on the Internet and looks up the programs offered by the Royal College of Surgeons in Ireland, located in Dublin, near St. Stephen's Green, you will discover that that medical school does not offer the degree MD.

Could the minister inquire whether or not this is another case of a vivid imagination like that of the burning crosses?

Senator Cools: Objection!

Hon. Sharon Carstairs (Leader of the Government): The honourable senator is well aware that Dr. Fry is a fully certified physician in Canada. She has been admitted to the practice of medicine and has practiced medicine primarily in the province of British Columbia. In fact, she has been the President of the British Columbia Medical Association. Therefore, the term MD, which means Doctor of Medicine in terms of our degree, meets certain qualifications and she has those qualifications.

Senator Kinsella: Honourable senators, notwithstanding the fact that the Royal College of Surgeons in Ireland offers degrees such as Bachelor of Medicine, Bachelor of the Art of Obstetrics and Bachelor of Surgery to those who graduate from medical school, that school does not grant the academic degree Doctor of Medicine.

INTELLIGENCE AND SECURITY

STATUTES AUTHORIZING DETENTION ON GROUNDS OF TERRORIST ACTIVITIES—NUMBER OF DETAINEES SINCE ATTACKS IN UNITED STATES ON SEPTEMBER 11, 2001

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to turn to more important issues. I should like to find out how many Canadian statutes presently have provisions that authorize detention of individuals for actual or theoretical terrorist activities or for reasons of national security. I do not expect the minister to have that answer right now. It could come in a deferred answer.

Could the minister tell us — and, we asked this the other day — how many people have been detained in Canada since September 11, 2001, in relation to terrorist activities or national security and under what authority they were detained?

• (1400)

Of those, how many were detained in the belief they were members of the Osama bin Laden terrorist network?

Hon. Sharon Carstairs (Leader of the Government): As I informed the honourable senator on another occasion, there are a great many detentions under the provisions of the Immigration Act and its authorities, both the one we passed recently and previous ones. In fact, I think the figure for the year 2000 was something like 38,000. The detentions are not broken down on the basis of whether the detainees have been detained for health reasons or whether they have been detained as potential threats or whether they have been detained for having criminal records or inappropriate documentation.

To my knowledge, honourable senators, there are no further detailed backgrounds. As far as those people who may have been detained with respect to the events of September 11, those files are presently with the RCMP. They are being investigated, and I do not at this point have access to those specific numbers.

[*Later*]

[*Translation*]

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I apologize for interrupting Question Period, but I wish to draw to your attention the presence in the gallery of His Excellency, Jean-Jacques Queyranne, Minister of Parliamentary Relations of the French Republic.

On behalf of all the senators, I welcome you to the Senate and to Canada.

[*English*]

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—STATEMENT OF REQUIREMENTS—COMPLIANCE OF CORMORANT

Hon. J. Michael Forrestall: Honourable senators, I have a question for the Leader of the Government. In a *Sun* chain newspaper article yesterday, Minister Eggleton criticized Team Cormorant's advertisement in the *Hill Times* about the change to the basic vehicle requirement specifications for the maritime helicopter. The report states that the minister said, "the company wants to make sure no one else qualifies for the $3-billion contract."

Is the minister admitting that the Cormorant is the only aircraft now technically compliant and able to meet the detail of the basic vehicle requirement specifications? Is that why the Department of National Defence has to change the basic vehicle requirement specifications about which I asked questions yesterday?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there is a simple answer to that question. The answer is no.

Senator Forrestall: I did not even get plugged in. Would you repeat that?

Senator Carstairs: No.

Senator Forrestall: Do not laugh. I have another question to which she cannot say no.

Honourable senators, the military set the basic vehicle requirement specs and the military deserves the best. Is it not true that an official at the Department of National Defence, in this case Mr. Paul Labrosse, project manager on the Maritime Helicopter Project, met with all three major helicopter contenders for the Maritime Helicopter Project this summer and asked each if they were compliant with the basic vehicle requirement specs? Is it true that, at that time, only the Cormorant was found to be technically compliant with the detailed specs?

Senator Carstairs: Honourable senators, my information is that the only aircraft that was not compliant at that time but that hopes to be compliant by the time the final bids are sought was Sikorsky.

Senator Forrestall: Honourable senators, the real reason the new basic requirement specs are being issued is because the only competitor now technically compliant for the skewed competition for the basic vehicle is Team Cormorant. Is it not true that both Eurocopter and Sikorsky demanded changes to the basic vehicle requirement specifications to enable them to technically compete in this competition? Will the minister come clean with the chamber and tell us the real reason that the basic vehicle requirement specifications are being changed? Believe me, they are being changed, minister. I would not stand here if I were not certain of that. I suggest it is to prevent Cormorant from winning this skewed competition uncontested.

Senator Carstairs: Honourable senators, this competition is not skewed. It has been open since the very beginning, but there has been a dialogue. That dialogue to date has generated 1,000 comments from interested parties. I would hope that the honourable senator is not suggesting that the Government of Canada should not seek the very best possible aircraft at the very best possible price and should not engage in active dialogue in order to ensure that we get both the best aircraft and the best price.

Senator Forrestall: I am sure honourable senators will be pleased to know that my very modest effort to elicit information pales in significance to the over 1,000 queries that have already been made. The word "skewed" is not mine; that word comes from a little higher up than this. The word "skewed" is apt here.

Do I understand the minister to be telling me that while there may have been conversations and all of that, no evidence was elicited from those summer meetings that, indeed, Cormorant was the only technically compliant competitor?

Senator Carstairs: Honourable Senator Forrestall, you were the one who used "skewed" and not me. The contract is not skewed. My information is clear. The only other aircraft that was not compliant because it had not yet reached its certification was the Sikorsky. It hopes to be certified by the time the final bids are available, but all the other players have been certified. Clearly, all are still in the bidding process.

Senator Forrestall: Honourable senators, to be clear, the word "skewed" comes from the courts. I was not the one to begin its use.

FOREIGN AFFAIRS

GOVERNMENT POLICY ON FOSTERING DIALOGUE ON TERRORISM WITH CERTAIN COUNTRIES

Hon. Marcel Prud'homme: Honourable senators, yesterday, out of courtesy, I yielded to Senator Carney. I wish to come back to what I was about to ask yesterday.

I refer to a question asked by our able colleague Senator Roche on the initiative that Canada should immediately undertake concerning the volatile situation in the Middle East. Senator Roche asked yesterday about the kind of initiative that could be taken over by Canada without just saying generally that we are in favour of initiatives. Are there any more initiatives that the government could undertake?

In passing, and I do not want an answer today, but I resent very much the fact that we do not pay to the Leader of the Government in the Senate, the minister, the same salary as the minister of the other place. It is unbelievable to be a minister of everything while being paid less compared to a minister of a few things in the other place. That is just an aside.

An Hon. Senator: You are in a good mood.

Senator Prud'homme: Yes, I am in a good mood since the return of the prodigal son to the IPU.

[*Translation*]

You are well aware of my keen interest in that part of the world, where some people are probably getting ready to attack Iraq and perhaps other countries afterwards. Again, Canada has this reputation. I will talk to a minister of the Crown this afternoon.

• (1410)

I just got back from Libya. The world seems to have changed since September 11. Why not take advantage of this change of atmosphere? Even in Libya, our relations could be excellent, including our trade relations. This would greatly benefit Westerners, including people in Calgary, and the agriculture industry.

Thanks to its great reputation, Canada has an opportunity to take specific initiatives. We are welcome over there. We are still popular. So why not take advantage of that reputation, which can be confirmed by the mere mention of the word "Canada"? Not too long ago, I was able to witness this popularity firsthand. To people who looked at me in a somewhat strange manner, I would simply say, in their language, that I was a friend from Canada. The atmosphere would then change immediately. Why not take advantage of the openness of people in the Middle East toward Canadian initiatives?

I would appreciate it if the minister would ask the ministers responsible and the Prime Minister why we have not been involved in new initiatives since September 11. This absence could lead us much further, and, in fact, much too far. I am simply asking the minister to convey Senator Roche's question and the point of view that I have just expressed to the government.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Prud'homme for his question. First, let me make it clear that I get paid exactly the same amount as any other minister of the Crown. I do get an overall salary that is slightly less than the overall salary of a minister who serves in the House of Commons, but that is as a result of the fact that the salaries of members of Parliament are $25,000 more than our salaries in this place.

• (1410)

Since I am a perfectly happy member of this chamber, I have no desire to go to the other place, and I accept the payment that each and every senator gets to serve in this honourable chamber.

Hon. Senators: Hear, hear!

Senator Carstairs: However, regarding the honourable senator's specific question as to whether we could do more in the Middle East, it is a question that deserves the time and attention of cabinet. It deserves my taking that message to cabinet, which I will do, not only on behalf of Senator Prud'homme and Senator Roche but, quite frankly, on my own behalf as well. I believe, as in so many opportunities, Canada has unique roles that it can play on the world stage. When tensions are tight and when tensions get hot, that is when the cool-blooded Canadians can often be of the greatest service.

INTERNATIONAL TRADE

UNITED STATES—IMPROVED TRADE AS A RESULT OF SECURE PERIMETER—GOVERNMENT POLICY

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. On November 27 of this year, trader experts Michael Hart and William Dymond of Carleton University in Ottawa released a paper called "Common Borders: Shared Destinies." In this paper they argue that the environment is now right for major strides towards improving and expanding Canada's trade agreement with the United States if Canada can win the confidence of Americans in our ability to help to maintain a secure North American perimeter. The paper goes on to assert that in an environment where both Canada and the United States are secure within a common North American perimeter, the border could be open for freer trade and the countries could advance improvements in trade relations building on the basis of the 1985 Free Trade Agreement.

Could the Leader of the Government in the Senate provide us with her government's position on the arguments advanced by Mr. Hart and Mr. Dymond, and what steps are now being taken to improve the perimeter?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have not had an opportunity to read the Hart and Dymond study, "Common Borders: Shared Destinies," but I certainly will undertake to obtain a copy.

In terms of what the authors advocate, I am personally not clear what is meant by the use of the term "perimeter." I do understand what is meant by the term "borders." I can tell the honourable senator that our greatest opportunities for trade tend to come along the line that runs between Canada and the United States. That is our shared border, our 49th parallel, although it is not the 49th in every place, as I used to point out to my geography students, but it is generally at 49 degrees across this country. The shared border must be made effective, viable and workable. On December 10, I believe the honourable senator will come to recognize that the government is making considerable progress in that area.

UNITED STATES—POSSIBLE COORDINATION TO IMPROVE SERVICES AT BORDER CROSSINGS

Hon. Donald H. Oliver: In the minister's reply she refers to the word "border." The U.S. government has already enacted legislation that includes a provision to triple the number of customs and immigration officers at its North American borders. As Mr. Hart asserts, it will take only six to nine months for those people to be trained and deployed. Once they are on the job, the U.S. capacity to do more inspections and more thorough questioning will greatly increase the now slow border crossing traffic.

In order to counter the likelihood of any problems, will the minister advise us whether her government will be making a coordinated and highly visible effort to engage the Americans in broadly defined talks to coordinate security, immigration and trading policies for Canada?

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Oliver for his question. It might come as a surprise to him that the Americans will equal the number of Canadian customs officers when they put this new force, if you will, into effect. The current status, however, has not significantly blocked traffic going from Canada into the United States, or from the United States coming to Canada.

The second part of the honourable senator's question, which talks about efficiencies and putting in place the new work plan quickly, I think is the essence of what we need to settle. That is being worked on. As you know, Minister Martin and Minister Cauchon met last week with Treasury Secretary Paul O'Neill as to how we can make those efficiencies work to both our interests, and progress is moving forward at a quick pace to ensure that we do not have further disruptions because disruptions hurt us more than they hurt the Americans.

AGRICULTURE AND AGRI-FOOD

RE-ESTABLISHMENT OF BANNED CONCENTRATED STRYCHNINE TO CONTROL GOPHERS

Hon. Herbert O. Sparrow: Honourable senators, my question is for the Leader of the Government in the Senate. There is a very serious problem of damage to crops in Western Canada by an invasion of Richardson's ground squirrels, commonly referred to as gophers. Prior to 1992 the Pest Control and Products Act allowed for the use of concentrated strychnine for the control of gophers. This product was made available in Saskatchewan and Alberta, to rural municipal governments, for sale and distribution to farmers and ranchers.

In 1992, the permission to sell and distribute concentrated strychnine was withdrawn. In its place a ready-to-use product of strychnine mixed with oats was licensed by the Pest Management Regulatory Agency for use by the agriculture industry. This product has proven to be ineffective for the control of gophers. Could the minister determine what the government is doing to licence the use of the strychnine product that was in use prior to 1992? Could the minister table in the Senate all scientific studies resulting in changes made to the availability of the product and, as well, all scientific studies relating to any human deaths or dog deaths from strychnine poisonings that would have been considered in making changes in the availability of the product to the agricultural industry?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Sparrow for his question. I am sure that those honourable senators who do not live in Western Canada, particularly those who live in urban centres, are not quite as aware of the gopher problem that exists. I can assure honourable senators that on a summer day, when I look across my lawn leading down to Lake Winnipeg, I can see those little creatures popping up all over the place. I am well aware of the gopher problem about which the honourable senator is asking his question this afternoon.

I will seek the information that the honourable senator has requested, and ask that the information be provided to me as soon as possible.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

The 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 6, 2001, by Senator Bolduc, regarding the World Trade Organization.

INTERNATIONAL TRADE

WORLD TRADE ORGANIZATION—
MULTILATERAL NEGOTIATIONS—SENATE INVOLVEMENT

(Response to question raised by Hon. Roch Bolduc on November 6, 2001)

During the 4th WTO Ministerial Conference in Doha, Qatar, WTO Members reviewed the operation and functioning of the multilateral trading system and decided on the possible agenda for enlarging trade negotiations from the subjects currently under discussion (agriculture and services). This included a Ministerial Declaration and decisions, including on accession of new Members to the WTO. These documents can be found on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_e.htm.

International Trade Minister Pierre Pettigrew tabled a document on October 24th before the House of Commons Standing Committee on Foreign Affairs and International Trade, outlining Canada's objectives for the 4th WTO Ministerial Conference and for the launch of a new round of trade negotiations at the WTO. The document includes details on Canada's position on specific issues, and is available on the Department of Foreign Affairs and International Trade web-site at http://www.dfait-maeci.gc.ca/ tna-nac/WTO-obj-e.asp. The Minister also addressed the Ministerial's plenary session on November 10th in Doha, Qatar, highlighting Canada's principal objectives for the 4th Ministerial. This statement is available on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_statements_e.htm. The results of the Ministerial Conference are available on the WTO web-site at http://www-chil.wto-ministerial.org/english/thewto_e/ minist_e/min01_e/min01_e.htm.

Canada's overall objectives for a new round of negotiations are to improve the lives of Canadians by increasing economic growth and productivity; create opportunities for Canadian agri-food, industrial, and service exporters and investors by achieving greater access to foreign markets and ensuring fairer conditions for their activities; provide Canadian consumers with better choices and better prices in goods and services; reflect changes in the global economy by updating WTO rules; encourage the WTO to be more transparent and open; contribute to economic growth and poverty reduction in developing countries; and address public concerns about the social and environmental implications of trade.

The 63 member delegation includes federal government officials, parliamentarians from five political parties, provincial/territorial government representatives, and private sector/NGO advisors. Criteria used for selecting advisors included: expertise on Ministerial priorities, committed and engaged on trade policy issues, constructive contribution to the delegation, and credibility with constituents.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we would like to start with Item No. 1 on the Orders of the Day, followed by the report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-7, and then move on to second reading of Bill C-36, as agreed earlier.

[*English*]

EXPORT DEVELOPMENT ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Ferretti Barth, for the third 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, I am pleased to rise today to participate in third reading debate of Bill C-31, the Export Development Act.

Last week I expressed my concerns about this bill, and I rise today to reiterate those concerns, after having heard from witnesses before the Standing Senate Committee on Banking, Trade and Commerce. There were two points that I raised at second reading: the environmental conditions and the public access to information.

Bill C-31's most significant change, and by far the most controversial, concerns a proposed exemption for the Export Development Corporation from the Canada Environmental Assessment Act and the Access to Information Act. As I refocus on the environmental concerns I raised at second reading, I would state clearly that I do not have any problems with the general principle of this approach. Indeed, I welcome the legislative requirement for such a review process. However, exempting the EDC from the Environmental Assessment Act makes us irresponsible when it comes to the environment.

The evidence used to support my concerns with respect to Bill C-31 was derived from credible sources. As I said last week, in 2001 the Auditor General identified significant gaps in the EDC's environmental review framework. What was also found were "gaps in transparency, particularly in the area of public consultation and disclosure of information, all critical elements of a credible environmental review process." Furthermore, the review indicates that short term business ventures, which represent two-thirds of the EDC's dealings, are not subject to environmental review.

There is little excuse for ignoring the findings of the Auditor General's report, especially in this case where the EDC is unwilling to establish its own concrete guidelines for environmental review. The public has a right to be informed about environmental risks of the EDC's insurance business. Other financial institutions in Canada, and internationally, are being held accountable or have an established approved standard for environmental issues.

There are always risks involved with business, but my concern is that the EDC should be bound to inform the citizens of Canada of the potential or the level of risk being undertaken by their activities.

We are already aware, and it is a matter of record, that the Export Development Corporation, or Export Development Canada as it is now called, is not noted for having an adequate environmental track record. Evidence of the EDC's lax policies were presented by Patricia Adams of Probe International before the Banking Committee where she said:

> We have 20,000 supporters from across the country who are concerned about EDC's long history of financing damaging projects, including nuclear technology to military hot spots in Pakistan and India, mines that dump cyanide into rivers and hydro damns that destroy fertile valleys in poor countries and force millions of people off their land.

Ms Adams also expressed concern in regard to the lack of review process for the EDC:

> The effect of this, according to Parliament's own legislative summary, is to give EDC's board complete, unlimited freedom to make any decision that would be virtually immune from judicial review.

Ms Adams continued later on:

> Bill C-31 will allow EDC to write the rules, establish the criteria, define the terms, assess itself and then decide whether it is justified in supporting a project that will destroy the environment.

The NGO working group on the Export Development Corporation is deeply disappointed with this bill. They have compiled an extensive dossier on the EDC. The case studies on EDC-supported projects detail the impact on the environment, on international commitment and, consequently, on people's lives.

According to Ms Revil, a representative of the NGO working group who appeared before the committee:

> Not only does Bill C-31 fail to provide appropriate checks and balances, or much needed direction, it proposes to reinforce, in law, a status quo that is highly problematic. Over 140,000 Canadians have written to the government, up to a few months ago, to express dismay over the status quo. Pages of newsprint have been dedicated to the failures of EDC as a public institution. Yet, Bill C-31 is silent in all areas of public interest, with the exception of the environment. Basically, it merely states that the EDC can decide what it will do.

Honourable senators, Bill C-31 does not ensure integral environmental protection against the EDC's business. If the government does not respect the Auditor General's findings and the recommendations of the Standing Committee on Foreign Affairs and International Trade of the House of Commons, can we believe or expect that the EDC will seriously establish an environmental review process?

We are duty-bound to establish guidelines reflecting the Canadian conscience and to maintain the Canadian integrity we have worked so hard to build. We cannot, with a clear conscience, allow the EDC to support environmentally unsafe projects overseas which may result in an adverse effect on what we know as the global environment.

Honourable senators, does the EDC's involvement in the Three Gorges Dam reflect Canada's values and our commitment to protecting our global environment? I think not. We cannot entirely blame the EDC for the Three Gorges situation, as it was the Prime Minister who announced the EDC involvement in the Three Gorges project during a 1994 Team Canada trade mission to China.

This bill is self-serving, and we should question the reasons the government is anxious to have the bill passed so quickly.

The EDC, which has always assumed its exemption from the Canadian Environmental Assessment Act, now faces two problems: First, the EDC must realize that Canada is committed to environmental protection; and second, the courts are looking into whether the EDC violated the government's own environmental assessment laws in approving a recent CANDU nuclear reactor sale to China.

With the government anxious to complete the sale of yet another CANDU reactor, this time to Romania, a country known for its poor nuclear safety record, the EDC's improprieties, in fact, may be subject to the Canadian Environmental Assessment Act. If Bill C-31 passes, the government will no longer need to worry about being taken to court for failing to abide by its own environmental guidelines; the EDC would be exempted. Furthermore, an environmental assessment would not hinder the CANDU sale to Romania.

Honourable senators, as I said before, if we believed that there was a possibility for the EDC to establish an appropriate framework exemplifying the Canadian perspectives on environmental issues, we would accept Bill C-31, but that is not the case. Bill C-31 falls short in terms of completeness, transparency and accountability.

• (1430)

Honourable senators, Bill C-31 does not prohibit the EDC from entering into questionable environment projects, but simply says that the EDC must ask itself if it is justified in so doing. If the EDC is incapable of establishing a sound review process to address environmental concerns, how are we to believe it is capable of making sound decisions as when to apply or not to apply the environmental review?

The EDC escapes all possible scrutiny. The bill declares that such a directive would not be a statutory instrument for purposes of the Statutory Instruments Act. In other words, Parliament will not have the option to review directives taken by the EDC. This implies that the EDC cannot be challenged on any undertakings that it deems an exception to its guidelines. Indeed, this is a self-serving loophole. One part of the clause says that there must be a review, and the other part dictates that the board of directors has overriding discretionary power to their own rules. It cannot be challenged on what it considers to be a mitigating measure. Indeed, the way the bill is worded, mitigating measures do not actually have to be undertaken, as the wording is framed in terms of whether there would still be a problem if they were undertaken.

Honourable senators, what makes the review of Bill C-31 more worrisome is the EDC's exemption from the Access to Information Act. Therefore, there is no legal obligation to inform the public. Ms Patricia Adams, the Executive Director of Probe International, who appeared before the Standing Senate Committee on Banking, Trade and Commerce, also expressed her concerns as follows:

> The Access to Information Act is a good law. It is not always evenly applied. It is often under threat from the government of the day, but it is one of the most important democratic tools the citizenry of this country has to define and obtain what it wants to know about government activities rather than the other way around.
>
> Without it, public oversight of EDC's activities is handicapped, allowing this Crown corporation that operates on Her Majesty's credit card to escape effective accountability.
>
> To placate public demand that EDC be subject to the Access to Information Act, EDC has offered up a wholly inadequate substitute, its new disclosure policy. Just as Bill C-31 creates a toothless exercise in environmental review that is designed for public relations, EDC's new disclosure policy is similarly designed to convince the public that EDC will be more transparent while it largely maintains the status quo.

Ms Revil from the NGO Working Group on the EDC went one step further by indicating the stipulations that should be in Bill C-31. She said:

> This bill should lay out criteria that it expects EDC to follow, such as the following: All transactions with potential or known significant adverse impacts must undergo an environmental assessment; all environmental assessments or transactions with known significant adverse impacts must include the consultation of locally affected populations; and information collected on impacts, through an assessment process, must be made public at least 60 days before the transaction's approval by the board of directors.

The EDC is not bound to appropriations, so there is no opportunity for either a House of Commons committee or a Senate committee to question its activities or to deny funding for objectionable projects as part of the supply process.

Honourable senators, the sole stipulations regulating the actions of the EDC within Bill C-31 is the Auditor General's review. Every five years, as I said at second reading, an audit will be carried out to review the design and implementation of the EDC's environmental directive and to report the findings to the minister and to Parliament. In actuality, it could take as many as six years by the time the report is finalized and tabled before we would find out if the EDC's environmental directives are sound. Now is that good public policy?

More distressing is that when the report is released, there is no obligation for the minister or the EDC to adjust procedures or policies to address any problems that may arise.

Much can happen in the five years before the Auditor General must report, and some have argued for an even shorter period review. Five years is the ceiling, and perhaps the minister should not wait that long.

Given the history of the EDC, I would be much more comfortable if there were some kind of parliamentary oversight of the EDC's environmental directives. The Library of Parliament's legislative summary on Bill C-31 makes an interesting observation on this point:

> Because Parliament has not prescribed any limits or criteria, the Board appears to have complete, unlimited freedom to make any decision, i.e., to define terms as it chooses, or to exempt any project it chooses. As well, the complete absence of limits on the decision-making power would suggest that the Board directives would be virtually immune from judicial review.

Honourable senators, the legislative summary goes on to outline some options to deal with this, all of which the government seems to have ignored. The summary states:

> The bill could specify that the Board must give reasons for exempting a transaction or a class of transactions. This would increase the transparency in the decision-making process, and would provide a reviewing court with something upon which to determine that the decision had been arrived at properly and not for improper reasons.
>
> Or, it could require that the Board submit its directives to a Parliamentary committee for approval (as is increasingly the case with regulations).
>
> Parliament could also require the Board to consult with concerned groups or other government departments, most obviously, the Minister of the Environment, prior to making directives, particularly where the directive involves defining terms such as "adverse environmental impact".
>
> As well...Parliament itself could prescribe, or incorporate by reference, the criteria to which the Board would be required to have reference in issuing directives.

In conclusion, honourable senators, there is a variety of ways to address the concerns I have raised about Bill C-31. A simple way to deal with this would be to deem those environmental directives to be statutory instruments. This would allow Parliament to review them if Parliament were so inclined and, indeed, would at least require that they be presented to Parliament.

Honourable senators, the wording of Bill C-31 specifies that such directives are not statutory instruments.

MOTION IN AMENDMENT

Hon. Donald H. Oliver: Honourable senators, to reverse this, making them into statutory instruments, I move, seconded by the Honourable Senator Di Nino:

> That Bill C-31 be not now read a third time but that it be amended in clause 9, on page 3, by replacing line 31 with the following:
>
> "(3) The directive is a statutory instru-".

Honourable senators, the result of this amendment is that lines 31 to 33 would read:

> (3) The directive is a statutory instrument for the purposes of the Statutory Instruments Act.

I believe this would go a long way to increase both the transparency and the accountability of the EDC's environmental review process, and I would urge honourable senators to support the amendment.

• (1440)

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Have the whips agreed to the time for the ringing of the bells?

Hon. Terry Stratton: We would like to defer the vote until tomorrow.

Some Hon. Senators: Tomorrow.

Hon. Bill Rompkey: Honourable senators, perhaps we could defer the vote until 3:30 p.m. on Tuesday next?

The Hon. the Speaker: Honourable senators, pursuant to the agreement of Senators Rompkey and Stratton, I now put it to the house: Is it agreed that the vote will be at 3:30 —

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): No agreement is required.

The Hon. the Speaker: If there is no agreement, it is normally deferred until 5:30 p.m. However, is it agreed then that the vote will be at 3:30 p.m. on the next sitting day of the Senate?

Hon. Senators: Agreed.

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.

The Hon. the Speaker: Does the Honourable Senator Joyal wish to speak?

Hon. Serge Joyal: Honourable senators, the adjournment of the motion stands in the name of the Honourable Senator Moore, who has informed me that he has no objection to me addressing the Senate this afternoon on this motion.

The Hon. the Speaker: Senator Joyal has the floor.

[*Translation*]

Senator Joyal: Honourable senators, this afternoon, we are resuming debate on the report by the Honourable Senator Milne with respect to Bill C-7 concerning a youth criminal justice system.

This bill has been debated extensively in this chamber and discussed at length in the Standing Committee on Legal and Constitutional Affairs. The honourable senators who have already spoken in this chamber have emphasized the large number of witnesses who appeared and the serious and detailed consideration of the bill by the committee. The other chamber held a comparable debate, at the end of which the Honourable Minister of Justice agreed to an important number of amendments to the initial bill.

This bill is not like many other bills we debate, the purpose of which is to adjust how the government manages its affairs in order to meet particular needs. Essentially, this bill would create a new youth justice system. As a result, the youth justice system we have known to date would be set aside in favour of a new system, which should be more effective, fairer, and more able to meet the needs of youth and the objectives generally desired by Canadian society.

This bill is important, and particularly so for Quebec, because it will have an immediate and significant impact on how the Quebec youth justice system works. As the senator representing the district of Kennebec, I feel compelled to take a particular look at the impact of this legislation, and also because, out of all the provincial youth justice systems, the Quebec structure — as was recognized by the majority of witnesses — is better than the one in the other provinces, since it succeeds in keeping Quebec's young offenders out of jail. Indeed, one of the goals of the new system is to reduce the incarceration rate for young people in Canada, a rate which, according to the Minister of Justice, is among the highest in the Western world.

This wounds our pride as Canadians, because we believe that we are living in a so-called liberal society. We want to live in a society that firmly believes in an individual's ability to enjoy his rights and freedoms to the fullest, while trying to make a contribution to Canadian society. Therefore, when we set up a new youth justice system, we must first ask ourselves on what fundamental principles such a system should be built. On what fundamental values should it be based? We can refer to two sources. First, Canadian law, which is the way our courts and our legislation have defined the status of children or youth. For example, the Honourable Beverley McLachlin made the following statement about children in 1998 — a few years before she became the Chief Justice of the Supreme Court of Canada — at the fourth biennial conference of the International Association of Women Judges:

[*English*]

> We must move from the view of a child as a thing and object, to the view that the child is a person, in the true sense of the word, with rights to be protected.

To me, that is the fundamental principle. The child or the teenager is a person and has to be protected; and he or she has specific rights and specific obligations. That statement of the Honourable Beverley McLachlin is not a statement which has come out of the blue. Other justices of the Supreme Court in previous years have defined quite clearly what is the legal norm —

[*Translation*]

Honourable senators, what legal standard should apply when we want to define children's rights? I will quote an excerpt from a decision by the Honourable Bertha Wilson.

[*English*]

Many of us knew the Honourable Bertha Wilson. In a 1986 decision in a case known as *Hill v. the Queen,* the Honourable Bertha Wilson wrote the following statement:

[*Translation*]

> If the youth justice system is to faithfully reflect the concept according to which children pass through various stages of development on the way to full-fledged adulthood, it must address their actions according to some degree of the standard they will attain with adulthood. The norm applicable to the average adult must be gradually modified to reflect the diminished responsibility of the accused because of his or her age.

[*English*]

What does that mean in plain terms? It means that a teenager or a child is not subject to the same legal norm as that of an adult. This is a fundamental principle. That approach has been confirmed in other cases of the Supreme Court.

In 1993, Mr. Justice Cory of the Supreme Court stated in the case *R v. M (J.J)*:

[*Translation*]

> ...dispositions must be imposed on young offenders differently because the needs and requirements of the young are distinct from those of adults.

[*English*]

What does that say? It says in legal jargon that —

[*Translation*]

— the legal standards applicable to children and adolescents cannot be the same as that applied to adults. This is the underlying principle, and it is nothing new. It was not just invented. It was expressed as far back as 1970 by the association of youth judges or magistrates. For example, it is very clearly stated in a 1970 article by the European Judge, Séverin-Carlos Versele, that, and I quote:

> The legal norm tends to become relative in cases of youth protection; it is not something that must absolutely be imposed until *pereat mundus.*

• (1450)

I will spare you the trouble of deciphering the Latin expression. What it means is that, in our Canadian system, when a youth justice system is constructed — in this case one for adolescents since we are talking of young people aged 14 to 18 — the guiding principle is that the young person's responsibility is graduated, and the system must be tailored to his or her degree of development, until the age of legal majority is attained, at 18. At that age, the degree of responsibility changes. This is the fundamental philosophy of the Canadian legal system. The Honourable Senator Pearson, who has for years been involved in international debates around children's rights, understands this and has provided us with a very eloquent explanation of how international treaties have defined this legal norm according to which the child is a person with different needs and one whose "criminal responsibility" cannot be assessed on the same basis as when he or she has reached adulthood.

I consider this principle exceedingly important, since it is reflected in the Convention on the Rights of the Child, the Beijing Rules, the International Convention on Civil and Political Rights and the Vienna Meeting of 1994, which set out the legal standards in juvenile justice. All these international instruments apply in the interpretation of Canadian law. This, in my opinion, is where there is a slightly different interpretation of the importance of these treaties in Canadian law.

Honourable senators, I am stressing this angle, because, as you know — we mentioned it at second reading — some of the provisions in this bill will be debated at the Quebec Court of Appeal. This reference, if the parties so wish, could ultimately end up before the Supreme Court of Canada. How does the Quebec Court of Appeal see international treaties in the interpretation of Quebec law, in the interpretation of the Civil Code, specifically, and of Canadian law?

Honourable senators, I can tell you that in a decision given on October 24, 2001 — and this is November 29, so, barely a month ago — it had the following to say in this regard:

> It should be noted that no legislation has incorporated the Pact of 1976 in domestic law. Judges are not bound by the standards of international law in interpreting the *Charter*, but these standards constitute a relevant and persuasive standard for interpreting its provisions, as Chief Justice Dickson stated in *Re Public Service Employee Relations Act*...and Madam Justice L'Heureux-Dubé in *Baker v. Canada*...

I repeat, this is a pertinent and persuasive standard for interpreting the provisions of the Canadian Charter of Rights and Freedoms.

Honourable senators, this is the crux of our whole debate. The government must have the right to govern, particularly in this instance. In its election platform last year, it promised Canadians that it would introduce a new youth justice system. We must all of us recognize that the government has a responsibility to deliver on this promise. It is there in black and white in the red book. However, in so doing, the government must respect the rule of law in Canada, as well as the international obligations Canada has assumed over the years.

When we look more closely at certain provisions of Bill C-7, we see that a number of them raise important questions with respect to the real conflict between certain provisions and Canada's obligations with respect to certain international instruments. The first one that jumps off the page is the very title of the bill: An Act in respect of criminal justice for young persons. What does the word "criminal" mean? It means "punitive," "violation of the law calling for a penalty." What we are putting in place is a system that describes itself as criminal. It is not about justice for young persons. If words are to mean anything, let them speak for themselves. A number of the bill's provisions are addressed specifically at the needs of young people. I certainly do not wish to suggest to you that a very large number of the bill's provisions are contrary to the interests of young people, which is the very foundation of the system. Several members of our committee pointed these out.

Therefore, the bill contains essentially provisions for punishment, sentencing, which introduce into the youth justice system the sentences provided for in the Criminal Code. This is the case for all offences for which a sentence of more than two years would normally be given.

The Hon. the Speaker: I am sorry, Senator Joyal, but your speaking time is up. Do you wish to seek leave to continue?

Senator Joyal: Yes, honourable senators.

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

Hon. Senators: Agreed.

Senator Joyal: What I think we should focus on is that by making sentences automatic, in other words as soon as a certain offence is committed — an offence defined in the Criminal Code —, the penalty that follows is the criminal penalty. This bill recognizes what is known in English as —

[*English*]

— the principle of penal sentencing. To me, this is where in this bill there is a fundamental question of how that new reality will be interpreted in the juvenile justice system. Other sections in the bill question some provisions of the various instruments that I quoted earlier on. The courts will have to read and interpret the bill carefully in order to decide whether or not some provisions of this bill are constitutional.

• (1500)

You understand, honourable senators, that, as legislators, our job is to question ourselves and question bills, especially when those very questions are in front of a provincial court of appeal where last month judges recognized that those obligations are of immediate interpretive value in defining the content of those provisions.

[*Translation*]

Honourable senators, this is one of the reasons the last amendment proposed on your list of amendments specifies that the Honourable Minister of Justice, in conjunction with the provincial attorneys general and the representatives of the aboriginal people, after three years —

[*English*]

— will check how the bill has been implemented and how we have been satisfying the norm with regard to taking care of the superior interests of the child under the justice system for kids in our country.

To my mind, this provision is simple. This morning, at the Legal and Constitutional Affairs Committee meeting, again under the chairmanship of our able Senator Milne, we adopted Bill C-24, which contains a similar provision. Why? Bill C-24 moves to new ground. We do not know how that authorization given to the police in Canada will be used. In her great wisdom, the Minister of Justice has proposed that, within three years, we look to see how it has been implemented.

I am trying to convince honourable senators that this system of juvenile justice is a new system. It is not just an amendment to the previous system; it is a new system. The committee adopted an amendment asking the Minister of Justice to review the implementation of the bill, the application of the bill, or, as per the discussion we had this morning, the enforcement of the bill. In three years, the Senate will have an opportunity to see whether it works; whether the objective of lowering the incarceration rate in Canada is being met; whether the provinces have put the money in alternative measures; and whether a specific system has been put together for the Aboriginal people. The committee had a very deep concern about that point, and I know that some other senators have already addressed that or might address it later in the debate.

The amendments seem to be natural. They flow from what we are trying to do here to deal with the rights and freedoms of a vulnerable segment of society; in fact the most vulnerable one, those who have less social support, less opportunity for education, a weakened family environment, and not the same opportunity that the average Canadian kid has to become a positive contributor to our society. Therefore, honourable senators, I will vote for adoption of the report.

The report is not perfect. There is an amendment in the report to which I took exception, and I abstained from voting on it. That amendment compels a judge to disclose information related to young offenders. The international convention on this aspect is clear, and I think that even the bill as it stands might be in breach of that convention.

Hon. Anne C. Cools: Honourable senators, I do not want to comment on the substantive issues of the bill, but I do want to say a few words on the unhappy situation senators found themselves in respect of the report of the Legal Affairs Committee. Essentially the chairman of the committee and the sponsor repudiated the report, and senators are being called upon to choose between Liberal senators for and against the report.

I wish to put a quotation on the record that I did not have with me during debate last week. I thought that future endeavours and future debates could profit from its consideration. The quotation has to do with the functions of committees and the duties and powers of committees. It comes from a gentleman who was by far one of the great eminent authorities on the subject matter, Sir Reginald F.D. Palgrave. The book is entitled *The Chairman's Handbook*, and the subtitle is *Suggestions and Rules for the Conduct of Chairmen of Public and Other Meetings Based Upon the Proceedure and the Practice of Parliament.*

I should like to read from chapter 12, page 87, which speaks to the question of committee procedure. The subtitle is "Duties and Powers of a Committee," and Sir Reginald said as follows:

> A Committee being a body endowed with delegated powers cannot act independently of its originating authority, or exceed the commission entrusted to it, or entrust its duties to others. The assistance of those who appoint the Committee is its legitimate function. And this assistance is generally rendered by the conduct of an inquiry through the reception of evidence, the drafting of a document, or the consideration of papers referred to the Committee.

My sole comment on this, honourable senators, will probably become more relevant in the future as we go forward, or perhaps as we reflect on the events. However, rather than mobilizing to defeat this report, a wiser or alternative strategy could have been to recommit the bill. In other words, we could have referred the bill back to the Legal Affairs Committee, and asked the committee to reconsider the advice or the recommendations it had made to the Senate chamber.

I wanted to put that point on the record for the sake of peace and justice, particularly because I think it is important that we understand that a major aspect of parliamentary life in this country, and any Commonwealth country, is the proper and efficient functioning of a party caucus. As a matter of fact, it has been said by many that a government functions as well as its party caucus functions. It is at times like this that I think we miss the great scholarship of former Senator John Stewart and those of his ilk.

I would remind honourable senators that if and when senators, for whatever reason, are distressed, anxious or dissatisfied with a committee report, the more parliamentary solution is to send the bill back to the committee, to recommit it, and to have the committee bring back to the Senate what the Senate would consider to be a better report. I just wanted to note that for the sake of upholding this noble institution of Parliament which we all love and all want to uphold and defend.

On motion of Senator Moore, debate adjourned.

• (1510)

ANTI-TERRORISM BILL

SECOND READING

Hon. Sharon Carstairs (Leader of the Government) moved the second reading of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism.

She said: Honourable senators, I rise today to begin second reading debate on Bill C-36, the anti-terrorism bill. This bill is a critical piece of Canada's response to the threat of terrorism, a threat that while certainly not new to any one of us presented a new threat to the world on September 11, 2001. Since that terrible day, countries around the world have moved quickly to respond with enhanced security measures through increased investigative efforts, through diplomatic initiatives, through an ongoing military campaign and through humanitarian relief. Canada has played its part on all of these fronts.

We have made progress, but, honourable senators, it would be wrong and it would be dangerous to think that the significant threat of terrorism has been eliminated. While the government, in partnership with the international community, has taken and will continue to take measures to maintain the security of Canadians, we must be vigilant to guard against future terrorist action. Our response to this threat must be wide ranging and long term. The proposed legislation in Bill C-36 is a vital part of this response.

Honourable senators, this is not, of course, the first time we in this chamber have had the opportunity to consider the initiatives contained in this bill. When this bill was first introduced in the other place, the government asked the Senate and then I in turn asked the members of this chamber to conduct a pre-study of the subject matter of the bill.

When I spoke in this chamber on the motion to appoint a special committee of the Senate to conduct that pre-study, I said the pre-study was one way of ensuring timely passage of the bill while, at the same time, maximizing the Senate's capacity to make a real contribution to the legislative process. I said that I was confident that our committee would be able to make a very important contribution.

Honourable senators, as we look at the bill that we have now received from the other place and if we compare it to the one that was originally tabled there, the conclusion is clear. Our committee, indeed, had a fundamental impact on this critical piece of legislation. It is evident that the concerns raised by the committee were taken very seriously by both the government and the members who studied the bill in the House of Commons.

Were all the recommendations presented by the special committee accepted? No, they were not; but, it is clear to me from the bill as amended, and from statements made by the Minister of Justice in particular, that every single recommendation was considered seriously and responded to even when in some cases not accepted. I believe the safeguards in the bill have been significantly strengthened, while remaining an effective legislative package to fight terrorism.

I thank the committee chair, Senator Fairbairn, its deputy chair, Senator Kelleher, and the other honourable members of the special Senate committee and those members who attended at almost each and every occasion for their valuable work.

When I spoke on October 16 on the motion to conduct the pre-study I undertook to address the bill in detail when it arrived in the Senate. I believe that thanks to the work of the special committee, most of us are now familiar with many of the provisions contained in the bill. Nevertheless, I will take this opportunity to provide an overview of the main elements highlighting, in particular, where significant amendments were made in the other place.

Honourable senators, our current law allows us to investigate terrorism and prosecute those who have engaged in various specific activities generally associated with terrorism, including hijacking, murder and sabotage. However, these and other laws are not sufficient. We can today convict terrorists who actually engage in various acts of violence if we are able to apprehend them after their acts. However, I would suggest that after what we saw on September 11, that is not good enough.

We need to be able to protect Canadians and prevent terrorist acts from being committed in the very first place. We need investigative tools that will help us gain information on terrorist groups before they engage in their attacks. We need preventive arrest powers to help us interfere with and destabilize terrorist groups who are in the planning stages of an attack. We need new Criminal Code offences that allow us to convict those who facilitate, participate in and direct terrorist activity. These must include a preventive aspect that applies whether or not the ultimate terrorist acts are carried out. We also need to be able to stop the flow of money that terrorists need to carry out their terrible acts.

These are some of the gaps that Bill C-36 would fill.

Bill C-36 would also implement the two remaining international conventions on terrorism that Canada has not yet implemented. These are the International Convention on the Suppression of the Financing of Terrorism and the International Convention on the Suppression of Terrorist Bombings. For example, the measures under Bill C-36 include new offences under the Criminal Code in both of these areas.

Honourable senators, we also need to enhance our ability to fight hatred and discrimination. The impact of September 11 has not only been felt through increased fear of terrorist activity. It has also led to growing distrust and, in some cases, even acts of violence against ethnic groups and individuals. As the Prime Minister has repeatedly said since September 11, the war in which we are engaged against terrorism is not a war against ethnicity or religion; it is a war against evil, against terror. Nevertheless, we are aware that Canadians of various ethnic groups and religions fear being targeted. We need to send a strong message that behaviour such as destroying or damaging a church, a mosque or a temple is simply not acceptable in Canada. We need to make it clear that using new technologies such as the Internet to disseminate messages of hate is a discriminatory practice under the Canadian Human Rights Act and will not be tolerated. Bill C-36 would make these very important changes to our existing law.

Honourable senators, the government's goal throughout has been to make the changes necessary to protect Canadians while remaining true to Canadian values. The Minister of Justice has stated on several occasions that the provisions of Bill C-36 comply with the Canadian Charter of Rights and Freedoms.

At the same time, we all recognize that certain aspects of this bill have given rise to concern. The bill authorizes the exercise of powers that, while perhaps not unprecedented in Canadian law, certainly are unusual. As the special Senate committee stated in its report:

> The challenge is to find the right balance: ensuring that our law enforcement and security agencies have the tools necessary to protect us and to prevent terrorism before it strikes while not undermining the freedoms that our government ultimately is mandated to protect.

In my view, honourable senators, the bill before you today strikes that balance by providing our law enforcement and security agencies with the necessary tools while ensuring that there are avenues of review and appeal. The bill would allow for the establishment of a list of entities about which there are reasonable grounds to believe they knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity. A number of concerns were expressed, particularly before the special Senate committee, about the possibility that innocent people could find themselves named on the list. The bill always provided a right for the listed person or entity to apply for judicial review of their listing by a judge of the Federal Court right away and if there has been a material change of circumstances. However, now the person or entity would also be able to apply to the Federal Court for judicial review every two years after the list comes up for year review. That is the result of the work of our committee.

• (1520)

I would also like to point out that this list is renamed in the amended bill. Originally it was the "list of terrorists." As the special Senate committee pointed out, this name itself can cause serious harm to persons wrongfully listed. The committee recommended changing the name, and this has been done. It is now the "list of entities."

The committee was also concerned that, with the bill as drafted, someone could be named to the list for having facilitated a terrorist activity, without having any knowledge that this was what he or she was doing. This has been changed. One can only be listed if one knowingly participated in or facilitated a terrorist activity.

There was a great deal of concern in our committee about the proposed certificates that could be issued by the Attorney General under the Canada Evidence Act, the Privacy Act, the Access to Information Act, and other acts, to prohibit the disclosure of certain sensitive information. A number of concerns were expressed that this power was not appropriately circumscribed. Indeed, the special Senate committee recommended that these certificates be made reviewable by the Federal Court. This recommendation was accepted and in the bill before us, these certificates are reviewable by the Federal Court. In addition, the Attorney General would only now be able to issue such a certificate after there had been an order or decision for disclosure in a proceeding. These certificates will now be published in the *Canada Gazette*.

Finally, the special Senate committee recommended that the certificates not be valid in perpetuity. Under the bill before you, the certificates will expire after 15 years. At that time, they can be reissued, but with the same rights of judicial review.

Honourable senators, the bill already contained many avenues for judicial review. These have been enhanced by the amendments passed in the other place.

The other critical piece, however, has been to ensure that there be review of this legislation by Parliament. This was a major focus of concern for the special Senate committee. Under the bill before you today, there are provisions for comprehensive Parliamentary review by committees of both Houses of Parliament within three years. This will be a comprehensive review of the provisions and operation of the act. By the way, the wording has been changed from the original, again to reflect the recommendation by the special Senate committee.

In addition, the special Senate committee asked the Attorney General to table an annual report in Parliament, delineating actions taken under the bill. The type of information requested was detailed in the report, including the number of people detained under the preventive detention provisions, the number arrested without a warrant, and other areas.

The bill before us provides that not only should the Attorney General table such an annual report, but also the Solicitor General. In addition, the provincial attorneys general and ministers responsible for policing will publish such annual reports. The information to be contained is set out in this bill. It includes detailed information about the preventive detention provisions and also the investigative hearing provisions.

Honourable senators, the preventive detention and investigative hearings provisions were clearly among the most controversial aspects and provisions of this bill. These were the subject of discussion by many witnesses, both before the special Senate committee and, to be fair, in the other place, and certainly within the commentaries provided by the professional media, letters to the editor, guest columns and so on. The information made public under these reports will enable honourable senators and members of the other place to monitor whether, in fact, the powers provided under these sections are the right ones for the job, whether the powers are, in fact, being used or overused, and whether we have the balance right.

Honourable senators, that brings me to the sunset clause. This issue has, of course, received a great deal of attention, both here and in the media. The special Senate committee recommended a sunset clause for the whole bill, recognizing that the provisions that implement our obligations under international conventions must of course not be subject to sunset provisions. The bill before us today does not implement that recommendation in its entirety. It does, however, provide a sunset clause with respect to these particularly controversial new powers.

Honourable senators, in my view, this arrangement represents an appropriate balanced approach. For example, I would not want the new criminal offences to expire in five years. If someone knowingly facilitates a terrorist activity, or knowingly instructs someone to carry out a terrorist activity, I want that person charged and prosecuted under the Criminal Code. I do not want those provisions to expire.

Under the proposed sunset clause, the controversial new powers to conduct investigative hearings and preventive detention will expire in five years, unless they are extended by a resolution of both Houses of Parliament. This will allow both Houses of Parliament to take a serious look at how these provisions have operated, with the benefit of the information provided in the annual reports. At that time, the members of this chamber and the other chamber can decide whether continuation of these powers is appropriate and necessary.

Honourable senators, I am confident that, armed with the information that will be made public under this bill, we will be well positioned to conduct our comprehensive review within three years, and then to assess whether to extend the preventive detention and investigative hearings provisions in five years.

There are other important amendments to the original bill as well. The definition of "terrorist activity" was discussed extensively, both before the special Senate committee and in the other place. Of particular concern was the paragraph dealing with acts or omissions that cause serious interference with or serious disruption of an essential service, facility or system. That paragraph included an important exception for lawful advocacy, protest, dissent or stoppage of work.

The intent of this exception was clear. However, concern was expressed by the special Senate committee and others, but primarily by us, that including the word "lawful" could cause problems, for example, with respect to an illegal strike. The committee recommended that this word be deleted, and the provision was amended in the other place.

The special Senate committee also recommended that a non-discrimination clause be added to the bill to address concerns that the definition of "terrorist activity" could be used to target ethnic or cultural communities in Canada. The bill before us includes such a clause, providing for greater certainty that the expression of a political, religious or ideological thought, belief or opinion does not come within the definition of a "terrorist activity."

Honourable senators, as you can see from this overview, the government has worked hard to respond to concerns expressed in this place, so that Canadians have a bill that enables our law enforcement and security agencies to work to protect us from terrorist activities while remaining true to what defines us as Canadians. It is truly all about freedom, but we cannot be free if we live in fear of terrorism.

I believe this bill strikes a good balance. I look forward to the deliberations of the special Senate committee as it studies the bill on a clause-by-clause basis. I ask you to support speedy passage of this bill to committee. I wish the committee good luck in its study, which I know will be intensive and broadly based.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, if it is the government's intent to have this bill sent to committee as expeditiously as possible, certainly on this side there is no objection, as in effect the principle of the bill, which is what second reading is all about, was given unanimous support by the Senate a week ago when the report of the special committee studying the subject matter of Bill C-36 was put to a vote. That report contains a number of recommendations that, while in large part ignored by the government, nonetheless reflect the wishes of the Senate — recommendations, I want to emphasize, that were endorsed after the government amendments were made known. The special committee will then be called on to study Bill C-36 itself and must do so within the context of these recommendations that, I repeat, have received unanimous support here.

• (1530)

No doubt, more than one witness will attempt to convince the committee that some of its recommendations are impractical or have been adopted in the other place, if not word — for word at least enough to meet their intent. The fact remains that the two most important recommendations, to my mind anyway, have been ignored: an overall five-year sunset clause and the appointment of "an Officer of Parliament to monitor, as appropriate, the exercise of powers provided in the bill."

The best argument I have found for an expiry clause and for an officer of Parliament is by referring to the War Measures Act. It was passed and given Royal Assent within a few short days, with very limited and even superficial debate in both Houses during an emergency session of Parliament in August 1914. The act was never intended to be used for purposes other than as a significant part of the war effort. In fact, it remained in force for nearly 75 years and was applied twice after: during World War II and during the October 1970 FLQ crisis.

Let me quote from an article in the *Queen's Law Journal* from the spring of 1993 by Patricia Peppin, Assistant Professor, Faculty of Law, Queen's University, who has done a thorough study of the use of the War Measures Act. The article, which refers to the year 1970, states:

> Immediately after the War Measures Act was invoked, the police conducted 1,624 raids and arrested 350 people. Under the regulations and the successor legislation, 465 people were arrested and two re-arrested, for a total of 467 arrested as of March 15, 1971. Of these, 403 were released without charge. Against the 62 remaining people, 86 charges were laid under the War Measures Act and 19 under the Criminal Code. Forty-four pleaded not guilty and either were found not guilty, or the Crown entered a *nolle prosequi* in the record.

That means that the Crown was not able to go forward with the charges.

> Thirteen people pleaded guilty; five pleaded not guilty and were found guilty. A total of 18 people were found guilty.

The point of bringing this up is obvious, I think. An act that was written in haste to cope with unprecedented circumstances was not allowed to lapse, with the result that it was used for purposes never intended, not even envisioned by its authors, against innocent Canadians without any accountability to Parliament. If ever there was an argument for a sunset clause in a bill that gives such wide discretionary powers to the government and that in the opinion of many seriously challenges the Charter, surely it has just been given. History, in our case, not only must be not be repeated, it must not even be given the slightest opportunity to be repeated.

Bill C-36, as amended, continues to allow the government extraordinary discretion in its application, as what has been added to the original bill in terms of a sunset clause touches only two aspects — preventive arrests and investigative hearings — while any judicial review and ministerial reporting are insignificant compared to an officer of Parliament acting as Parliament's watchdog, independent of the executive in the monitoring of the act.

The Minister of Justice agreed to the Senate committee's recommendation that a certificate issued by the Attorney General be, in her words, "renewable by a judge of the Federal Court of Appeal." The courts normally interfere with the exercise of ministerial discretion only when bad faith or improper purposes on the part of a minister can be demonstrated. While judicial review of any sort is welcome, upon reflection I can only wonder if the judiciary is anxious about being or even will accept to be involved in any review that involves a political decision, which describes most ministerial decisions.

In support of that concern, I want to quote from a Supreme Court decision in *Attorney of General of Canada v. the Attorney General of British Columbia* in 1991. The Supreme Court stated:

> ...the Court's primary concern is to retain its proper role within the constitutional framework of our democratic form of government...In considering its appropriate role the Court must determine whether the question is purely political in nature and should, therefore, be determined in another forum or whether it has a sufficient legal component to warrant the intervention of the judicial branch.

If any judicial review envisioned by Bill C-36 is to be limited by the Supreme Court's opinion, one may well ask what its value is if it can only be based on alleged bad faith and improper purposes. The Canadian Judicial Council's views on the judicial review components in Bill C-36 are essential, as its appears to me that it will involve decisions the Supreme Court has advised "should be determined in another forum."

Pre-study did not allow an evaluation of a number of clauses unrelated to anti-terrorism. I suppose it can be argued that while some of them do not seem to relate directly to combating terrorism, they assist in an indirect manner; for example, those relating to economic espionage and the expanded definition of hate crimes. However, the proposed amendment to the Canada Evidence Act is so extensive that it cannot be allowed to pass unnoticed. It states, in effect, that any official — not just a minister of the Crown as at present — may object to the disclosure of information in any judicial proceeding and that if an objection is made the court "shall ensure that the information is not disclosed..."

One cannot take lightly the withholding of evidence in any case as all parties in the proceedings are affected, as is the administration of justice. I want to make it clear that this is a proposed amendment to the Canada Evidence Act, and so it can be used for any purpose, not just for anti-terrorist ones. Its ramifications are such that the government should be reprimanded for in effect burying an amendment in an omnibus bill rather than reopening the Canada Evidence Act and allowing a proper debate of the amendment by itself.

To stress why this should be of concern to all parliamentarians, and to all Canadians for that matter, what is the definition of "official"? According to the amendment, one has to refer to section 118 of the Criminal Code, which says:

> "official" means a person who
>
> (a) holds an office, or
>
> (b) is appointed to discharge a public duty;

In effect, there are hundreds of thousands of people in this country who can act under this amendment and ask a court that information in a particular case not be disclosed.

There are two general questions that the government is obligated to answer: What powers in Bill C-36 are not available in current legislation, such as in the Criminal Code; and why is the Emergencies Act, which gives the executive powers similar to those in the late and unlamented War Measures Act, not the principal tool in the government's anti-terrorism program?

While I do not have the complete answer to the first question, although the Leader of the Government did give a partial answer to it, I suspect that I know the answer to the second. The Emergencies Act includes provisions for parliamentary involvement and oversight, and even a veto over its application by the executive. Sadly, to date anyway, the government is not prepared to accept this in Bill C-36. Yet the committee's recommendation for a sunset clause and parliamentary oversight through an independent officer has been supported by this chamber, and such an endorsement cannot be ignored by the committee or by this chamber when it comes to decide on Bill C-36 itself.

During the special committee's hearings, the Minister of Justice on more than one occasion indicated that no final decision on Bill C-36 would be taken until she had studied its report, along with other representations. In her presentation on the amendments, she credited the Senate committee for some of the changes that were eventually adopted in the other place. Such openness is to be commended and hopefully will be reconfirmed when the committee begins its hearings on the bill itself. If honourable senators are being told that Bill C-36, to put it bluntly, is a done deal and that Senate amendments will not be entertained, that renders meaningless the testimony of witnesses with legitimate concerns as well as the opinions of committee members and brings into question the purpose of the Senate.

• (1540)

Yesterday's press release, prepared by the offices of the Minister of Justice and the Solicitor General, even before the vote on Bill C-36 was held in the other place, does not augur well. It is headed: "Federal and Provincial/Territorial Justice Ministers work together to fight terrorism," and includes no less than five specific references to Bill C-36, as if the bill were already in force. Nowhere, not even as a footnote, is there an indication that the proposed legislation is still before Parliament.

The Minister of Justice, as sponsor of the bill, must reassure us that she is still open to amendments, whatever artificial deadline the government seems to want to impose. I am sure that we can all agree that the authority of Parliament and the safeguarding of the rights and freedoms of all Canadians must come before the need to respect the holiday adjournment period of the House of Commons.

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 Carstairs, bill referred to the Special Senate Committee on Bill C-36.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator Robichaud, P.C.*).

Hon. Anne C. Cools: Honourable senators, the Honourable Senator Robichaud has yielded the floor to me.

Honourable senators, I rise to speak briefly to Bill S-20, which is Senator Stratton's bill to provide transparency and objectivity in the selection of individuals and candidates to be appointed to certain high public positions. Senator Stratton is ambitious and zealous in attempting to attain objectivity and transparency in appointments to high office. From what I can see, this is a most interesting bill and a most interesting and parallel set of questions.

Honourable senators will know that one of the issues in which I have taken substantial interest here in the chamber is the phenomenon of Royal Consent to bills which affect the Royal Prerogative in particular. My interest in this bill stems from that. The community of law for the entire country is centred in the Queen, particularly that section of the law that pertains to appointments to high office. All of us who sit in this chamber were summoned by Her Majesty to sit herein.

I will not develop my particular comments more fully today, but they flow from Senator Joyal's intervention of June 5, 2001, when Senator Joyal rose on a point of order. Unfortunately, I was not in the chamber when Senator Joyal spoke, so I could not speak to the point of order, but honourable senators are aware of my thoughts on the need for the Royal Consent to bills.

On October 25, 2001, the Honourable the Speaker ruled clearly, unquestionably and beyond any controversy, and stated the following:

> Having now arrived at the conclusion that Bill S-20 affects the prerogative, I must conclude that it requires the Royal Consent.

Honourable senators will know that those of us who are concerned about this issue have been raising these issues in respect of certain bills for some years now. In this particular instance, the Honourable the Speaker made a decision that the bill requires the Royal Consent.

What remains unanswered, however, is how Senator Stratton proposes to obtain the Royal Consent. Her Majesty's ministers are assumed to be known and chosen by herself, and therefore are known to have a ready access to Her Majesty. However, that is not the case in the instance of a member of the opposition, although there are many precedents on the record in the jurisprudence that speak to the entire issue of members of the opposition obtaining the Royal Consent.

Honourable senators, it is my intention to develop this matter more fully in a few days. There is one particular document that I am awaiting, and as soon as I obtain that document, I will proceed.

On motion of Senator Cools, 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 recommends 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.—(*Honourable Senator Bryden*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to speak in support of this motion.

Honourable senators who have spoken in the debate to date have canvassed historical and cultural considerations. This afternoon, I would like to reflect on some dimensions of the faith journey of the Acadian people and their devotion to the Virgin Mary, whose Assumption is celebrated on August 15. In many ways, it was this common devotion which established the close relationship between the Acadian and Irish communities in Atlantic Canada — a relationship which finds expression in names such as Sean LeBlanc, Eugene O'Leary or, indeed, Noël Kinsella.

• (1550)

Honourable senators, my maternal grandmother was Lucie Bernard, a descendant of the Bernard family of Malpeque on the Île de Saint Jean, now Prince Edward Island, and one of the eight Acadian families which, in 1799, founded Tignish. But I digress.

The choice of August 15 as the day of the Fête Nationale des Acadiens et Acadiennes was not by chance. Rather, this was a deliberate decision taken by those participating at the first Acadian National Congress held in Memramcook, New Brunswick, in 1881.

[*Translation*]

The celebration of August 15 is a tradition that is solidly rooted in the hearts of the Acadian people. A celebration that is religious and secular both, it defines the very identity of the Acadian people, who chose it precisely in order to publicly affirm their difference and underscore their considerable contribution to the building of what is now Canada.

The choice of the celebration of the Assumption of the Blessed Virgin was not mere chance. It has connections with the very origins of Acadia, which was France's first permanent settlement in North America, on Île Sainte-Croix in what is now New Brunswick, in 1604, and at Port-Royal the following year. This is a distinction of which Acadians are justly proud.

A place name that is still in use in Nova Scotia, Baie Sainte-Marie or St. Mary's Bay, was selected by none other than Samuel de Champlain on May 24, 1604, indicating just how far the devotion to Mary dates back in Acadian history.

This was even before France was consecrated to the Virgin Mary by Louis XIII, on August 15, 1638. Louis XVI followed his father's example, and did the same in 1650. That date became a "fête nationale" in France long before that term was actually invented. Even today, the Assumption continues to be a statutory holiday in the very secular French Republic.

The first parish dedicated to Our Lady of the Assumption is also found in Acadia, as it was Monsignor de Laval who dedicated the parish of Port-Royal as such in 1678; this was a first in Canada.

There are numerous signs of the popular devotion to the Virgin Mary in Acadia. A devotion that natives shared and continue to share to this day.

Countless places in the former Acadia have borne the name of the Mother of God since the earliest times. Despite the ravages of time, or perhaps because of them, this devotion remains deeply embedded in the religious, social and cultural heritage of Acadia. In fact, this devotion has even grown during the 19th and 20th centuries.

It was therefore no surprise when Acadians adopted Our Lady of the Assumption as patron saint in Memramcook in 1881, during their first National Congress. Some 5,000 people took part in this first large manifestation of the Acadian resurgence.

The gesture made by Congress delegates was as much political as religious, as there were two clashing factions. On the one hand, there were those who wanted the Feast of St. John the Baptist, the national feast day of French Canadians, to be the national feast day for Acadians. On the other hand, there were those who ardently believed, for the historical reasons given earlier, that Our Lady of the Assumption should become the patron saint of Acadia, and that August 15 should be the Fête nationale de l'Acadie.

Debate on this basic issue was courteous, certainly, but long and heavy. It was not a matter of rejecting Quebec, a friend and neighbour as it has been and continues to be, but of expressing once and for all the specificity of Acadian identity. The historical reasons were strong, as we know. The political reasons were equally so.

The president of the Société Saint-Jean-Baptiste of Quebec City, J.P. Rhéaume, on behalf of French Canadians, told those attending the congress, and I quote:

> You have given a truly national and patriotic quality to your convention by affirming your faith and your nationality, but what is most admirable is the practical aspect of it. You have understood that the finest demonstrations are nothing without practical work. We are therefore pleased, gentlemen, to see that the work of your convention will be useful and longlasting.

One of these was the choice of Assumption as the national feast day of the Acadian people. It was the energetic Father Marcel-François Richard, future prelate, the parish priest of Rogersville, in New Brunswick, who became the spokesperson — better, perhaps, the leader — of those who preferred the Assumption to St. John the Baptist. He brilliantly set out and defended the proposal and won the day without ruffling the feathers of the opposing clan.

Future Senator Pascal Poirier agreed with Father Richard. It was he who told the national congress, and I quote:

> With the feast of St. John the Baptist as our national feast day, we would be indistinguishable from Canadians. Do we not want to remain who we are and, furthermore, have people know who we are?

This summed up magnificently the purpose of the first congress, which lay the foundations for the spectacular revival of the Acadian people in the Maritimes. The next congress, held in Miscouche, Prince Edward Island, in 1884, completed the work started in 1881, with the adoption of a national anthem, the *Ave Maris Stella*, a flag bearing the star of the Virgin Mary, patron saint of the sea and symbol of hope, and other symbols that still define today the exciting presence of a Canadian community that had succeeded in preserving its rich heritage.

This heritage comprised many religious communities, for women and men, without whom the French tradition would not have survived, despite the best of efforts. All of them, whether they were involved in hospitals or education, with their special devotion to the Virgin Mary, the patron saint of Acadia, contributed through their heroic efforts to the blossoming and growth of modern Acadian society.

The late Father Clément Cormier, C.S.C., one of the greatest Canadians of his day, and with whom I had the unique privilege of working on the New Brunswick Human Rights Commission, gave heartfelt praise for the dedication of these religious communities when he said:

• (1600)

> If these religious communities had not existed, if they had not fulfilled their role in small communities, I am convinced that the Francophonie in the Maritime provinces would not have survived.

The founder of l'Université de Moncton, himself a very great Acadian educator, spoke from experience and authority.

Honourable senators, the flag and symbols adopted at the 1884 Acadian national congress were officially recognized as Canadian symbols on June 30, 1995, by our former colleague the Governor General of Canada, the Right Honourable Roméo LeBlanc.

In order to complete a process begun in 1881, we should now officially recognize, at the national level, August 15 as a holiday for Canada's Acadian people.

In 1881, at the Memramcook congress, Sir Hector Langevin, then Minister of Public Works in the government of Sir John A. Macdonald, told Acadian delegates:

> You carry with you the sympathies of the past and the hopes of the future.

Honourable senators, the hopes of the future to which Sir Hector Langevin was referring were fulfilled beyond all of the Acadians' expectations of 120 years ago. This anniversary is of national importance. It should not go unnoticed. What better way to mark it than to adopt Senator Losier-Cool's motion?

The Parliament of Canada, which benefitted from the presence of remarkable Acadians, both in this chamber and in the other place, now has an opportunity to solemnly follow up on the wish expressed by Acadians. I will gladly support this initiative, because in some ways it is an official recognition of the vigour of the Acadian community, which not only survived a disaster that some thought would be fatal, but which also, with courage and determination, found its place in the modern world.

Hon. Laurier L. LaPierre: Honourable senators, being an Acadian at heart, I move the adjournment of the debate.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, when Senator Bryden moved the adjournment of this debate, he said that he had no objection if someone wished to address this inquiry this week.

I therefore ask for the honourable senators' consent to have the adjournment of the debate remain in his name.

On motion of Senator Robichaud, for Senator Bryden, debate adjourned.

[*English*]

ASIAN HERITAGE

MOTION TO DECLARE MAY AS MONTH OF RECOGNITION—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Carney, P.C.:
>
> That May be recognized as Asian Heritage Month, given the important contributions of Asian Canadians to the settlement, growth and development of Canada, the diversity of the Asian community, and its present significance to this country.—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, in consultation with Senator Poy, I have informed her that although I want to speak to her motion, I will not be able to do it for some time yet. I have informed the Honourable Senator Poy, as I now inform the chamber, that if she is prepared to make her reply and have the question put, that is all right with me. I am prepared to yield the floor to her.

The Hon. the Speaker: Does the Honourable Senator Cools wish to leave this item standing in her name?

Senator Cools: Honourable senators, since I will not be here next week, Senator Poy would find herself in an awkward position if she were to rise to bring on a vote and I were not here to yield to her. Perhaps we could let the item revert to Senator Poy. She would then have the right of reply.

The Hon. the Speaker: Honourable senators, is it agreed that the motion stand in the name of Senator Poy?

Hon. Senators: Agreed.

Order stands.

[*Translation*]

INTELLECTUAL PROPERTY RIGHTS OVER PATENTED MEDICINES

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to three diseases which are sweeping the developing world and which draw many to ask whether intellectual property rights over patented medicines have not taken precedence over the protection of human life.—(*Honourable Senator Fraser*).

Honourable Joan Fraser: Honourable senators, like those who preceded me in this debate, I thank Senator Finestone for her initiative. In a country as rich and privileged as ours, it is easy to forget the scourges which afflict millions of people the world over.

As she has done throughout her career, Senator Finestone forces us to think about these millions of disadvantaged people and to reflect on our obligations to our fellow citizens on this fragile planet.

[*English*]

Honourable senators, I speak as someone who strongly supports the protection of intellectual property rights on both moral and practical grounds. On moral grounds, it seems to me simply wrong to argue that the fruits of someone's intellectual work do not belong to that person or corporation, just as the fruits of their physical labour do. If a carpenter builds a table, it belongs to him. If a philosopher writes a book, it belongs to her, and so on. The creator of a work owns it, and is free to sell it on the terms he or she chooses, if they can find a buyer.

[*Translation*]

On practical grounds, it seems just as obvious to me that in our political and economic system, we must respect the intellectual right of pharmaceutical companies, because this is the only way for us to be sure that they will do the necessary research to discover the new drugs the world needs. This research and the subsequent process of developing a new drug can take years. For each useful discovery, there will be many failures. All this is terribly expensive, and companies will simply not embark on the process unless they are certain that they will ultimately be able to profit from their efforts. If companies do not do this research, who will? Not governments. Not universities — they do not have the necessary financial resources. In our system, this role falls to pharmaceutical companies.

[*English*]

This does not mean, however, that states should not intervene when market mechanisms are clearly failing to operate in the public interest — and it is clearly not in the public interest for millions of people to be deprived of drugs that they desperately need, solely because the drug companies insist on charging prices that are utterly unaffordable in most of the developing world, and the drug companies can make that insistence stick because of the patent system.

Previous speakers in this inquiry have noted the pressures now being exerted on pharmaceutical companies to make some drugs, notably those used to control AIDS, available at low cost in some of the poorest African countries. The companies have agreed to do so in some cases, though implementation of those agreements still appears to be, at best, spotty. Surely, this difficulty should not have to be addressed on a laborious case-by-case, country-by- country basis. Indeed, it seems to me that now would be an ideal time for Canada to spearhead a new international effort to establish a broad system that would exploit the exceptions to patent protection that are already allowed for under the agreement on Trade Related Aspects of Intellectual Property Rights, known as TRIPS, and about which previous speakers have spoken so informatively. As those speakers have already noted, the rules specifically allow for exceptions in cases of public health emergencies, and if ever there was a public health emergency, surely it is the devastating scourge of AIDS in Africa.

• (1610)

I think that now is an excellent time for such an initiative because this is one of the comparatively rare moments when people in the developed countries in general, and the United States in particular, are forced into awareness of the way in which our world is interconnected. Isolationism is, however briefly, out of fashion just now. We should try to take advantage of the moment in ways that go beyond simply joining in military alliances, important and crucial though those military efforts are. It surely would not be possible to establish new international rules quickly — that kind of thing always takes years — but it might be possible to prod the industry into doing the right thing voluntarily now, in all of the world's poorest countries, if enough governments made it plain that the alternative was to face more stringent rules in the future. I can think of no country with better credentials, in both the developed and the developing worlds, to promote the effort than Canada.

There is, however, another point that I should like to raise, and that is the danger of focusing all of our attention on the question of drugs, important though that is. We in the Western World often have a tendency to look for single solutions to complex problems, and I would not want us to fall into that trap here.

In her speech, Senator Finestone mentioned three terrible diseases that are raging in the Third World: AIDS, tuberculosis, and malaria. The spreading of all three are diseases can be directly linked to conditions that have nothing to do with pharmaceuticals. In the case of AIDS, while we must do everything we can to help its victims, including particularly the millions of children it has orphaned, we must also redouble our efforts at education about AIDS and about the need for safe sex practises. In many countries, this requires a sustained effort to change some of the most deeply rooted social customs and attitudes. It is difficult, time-consuming and often frustrating work.

To focus only on drugs for the victims, whether for AIDS or the other diseases, is like tackling the problem of family violence by focusing on the availability of bandages. In the cases of tuberculosis and malaria, the elements that need sustained attention, along with drugs, are social and environmental. We know, and have known for many years, that TB spreads most easily in conditions of poverty, which bring in their train overcrowding, poor hygiene and malnutrition. Yes, we need to ensure that victims get medical treatment and that people are immunized, where that is possible, but it is also true that the more we do to eliminate poverty, the more we do to eliminate the conditions in which TB can run free. Honourable senators, if you think this is an argument for increasing our foreign aid, you are absolutely right.

As for malaria, its spread is almost entirely due to environmental factors. Malaria is spread by mosquitoes. If you eliminate the mosquitoes and the conditions in which they thrive, you will also eliminate malaria.

[*Translation*]

Honourable senators, as it happens, I have some personal experience of this terrible disease. Because of my father's work, I spent most part of my childhood in a small South American country known then as British Guyana, which is Guyana today. For centuries, malaria was endemic to this country, and to all of the countries near the equator. Thousands fell victim to the disease, as continues to be the case in many countries around the world.

[*English*]

Yet I did not get malaria. Nor did my family. Nor did anyone I knew in Guyana, rich or poor. We did not get malaria because by the time my family arrived in 1947, malaria had been eliminated, wiped out, in Guyana. It was eliminated through two things: first, the widespread use of DDT, and second, sustained attention to obvious environmental steps like not leaving standing water where mosquitoes can breed near houses. There were still millions of mosquitoes in Guyana when we arrived there, but no malaria.

As far as DDT is concerned, we all know about the environmental dangers that it turned out to cause. I must say that since my own life may have been saved by it, I have never managed to muster quite the outrage about it that many people came to feel. I am obviously not suggesting a return to its widespread use. I do, however, think there is a lesson here about the need to focus on prevention as well as cures.

Much is already being done. Modern science and technology have found safer insecticides such as pyrethroids that can reduce child mortality from malaria by one-third if they are used to impregnate bed nets or curtains. A Multilateral Initiative on Malaria was signed in Dakar in 1997, and international research continues on vaccines, medications and methods to control malaria-bearing mosquitoes. Yet malaria continues to spread, and as with so many other diseases, drug-resistant strains are emerging.

It occurs to me, honourable senators, that one promising avenue ought to be research on biological agents. Any of you who are gardeners know, for example, that you can buy ladybugs by mail order to attack a number of the pests that lay waste to flowering plants. You can buy more sophisticated biological treatments by mail order, for example, specialized organisms that will attack and defeat some of the grubs that devastate lawns. If we can find ways to save rose bushes and golf courses by mail order, why can we not discover ways to eliminate the parasites that cause malaria? I can think of few more worthy recipients of major public funding, whether as part of our foreign aid spending or as part of Canada's admirable efforts to boost research and development in the field of the health.

To say this is easy, of course. Doing it is not so easy. The basic point I wanted to make today is quite simple. The problems of overzealous patent protection and drug pricing to which Senator Finestone has drawn our attention are real and need public attention. However, the real problem, the root problem, is not patents or prices; it is the diseases themselves. We do need to see that the drugs can be made widely available in the Third World, but that is only the first half of the job. The second half is to work on defeating the diseases themselves and the conditions in which they flourish.

On motion of Senator LaPierre, debate adjourned.

THE NATIONAL ANTHEM

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Poy calling the attention of the Senate to the national anthem.—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, I rise to speak to this debate on Senator Poy's inquiry calling the attention of the Senate to the national anthem. This inquiry is about more than calling the attention of the Senate to the national anthem. This inquiry is about an embryonic idea to at some point in time bring forth a proposal altering the words of the national anthem. This issue was widely publicized during the summer months, and it is my intention to speak to this subject matter.

I believe that anthems are usually created as pieces of art and then adopted in practice by nationals, usually in day-to-day living, singing and celebratory occasions, and then over time, after they have ripened and matured, they are adopted as national anthems.

• (1620)

A national anthem is not something that should be changed frequently. I intend to oppose Senator's Poy's proposal to change the national anthem. I feel great patriotism in the anthem as it stands. I repudiate any notion whatsoever that the anthem as it stands is oppressive to women, or that it is in some way exclusive of women. I reject that notion at the outset.

Honourable senators, the lyrics of our anthem begin as follows:

> O Canada, our home and native land.
>
> True patriot love
>
> In all thy son's command.

It seems the words "In all thy sons command" have been found by many senators to be objectionable. I submit that somewhere in this country there is someone who would object to every single word. It becomes then a never-ending proposition.

Honourable senators, I was not born in this country. Some females may want to change the words "In all thy son's command." Perhaps people who were not born in this country may want to change the term "native land." I would submit to honourable senators that it is an endless proposition. I am no less a Canadian because I was not born in this country. Neither is one who was born in this country any better a Canadian than I am.

I belong to that generation of individuals who, upon moving to Canada — for me that was in 1957 — never felt for a moment that I was going to a foreign country. In my child-like mind, in my peculiar brain at the time, I just thought I was moving from one part of the British empire to another part.

An Hon. Senator: Terrible!

Senator Cools: Terrible? I think it is absolutely glorious and wonderful. That is my heritage. Do you believe in people's heritage. My heritage is colonial British.

I wanted to make the point that the opening up of national anthems is a very serious matter and one that is potentially extremely divisive.

The real issue that I want to address in my remarks, which I shall continue soon, is the treatment of women in respect of patriotism and other related areas. I am concerned about what I would consider to be enormous historical revision that has taken place on so many of these questions.

To whet the appetites of senators for what I shall say when I choose to complete my remarks, I want to go to the famous Persons case. As honourable senators know, I was not enthusiastic of the erection of the statues of the Famous Five. I would like to put on the record today an oft-quoted excerpt from the Persons case in 1930, being *Edwards v. the Attorney General for Canada*, as adjudicated by the United Kingdom Judicial Committee of the Privy Council. When I rise again, I will begin my remarks from these words of Lord Sankey, the Lord Chancellor:

> The exclusion of all women from public offices is a relic of days more barbarous than ours, but it must be remembered that the necessity of the times often forced on man customs which in later years were not necessary.

Honourable senators, there is great misunderstanding about the barbarism that Lord Sankey was talking about. He continued:

> Such exclusion is probably due to the fact that the deliberative assemblies of the early tribes were attended by men under arms, and women did not bear arms.

That is the truth; that is the barbarism. Lord Sankey continued:

> The likelihood of attack rendered such a proceeding unavoidable, and after all what is necessary at any period is a question for the times upon which opinion grounded on experience may move one way or another in different circumstances.

I just wanted to begin my contribution to this debate by putting this material out for all honourable senators to consider: The barbarism being referred to was the barbarism of earlier eras of history when men had to be armed and prepared to protect their families and their communities because of the ever-present risk to security, a risk to life and limb. It is unfortunate that, in these days, we tend to misinterpret much that has been said.

The width of the aisles in this chamber were determined in previous times by a need to keep swordsmen from fighting each other. Honourable senators, it is a terrible disservice to all of those war dead who went out in previous generations to fight for this country. That is why I will not be supporting any attempt to change the words of the national anthem.

Honourable senators, having said that, I move the adjournment of the debate.

Senator Taylor: If the item is to fall off the Order Paper in any event, I would like to speak.

Senator Cools: I have moved the adjournment of the debate.

Senator Taylor: You have just spoken. Have you not used up your time?

The Hon. the Speaker: Honourable senators, Senator Taylor has requested the floor. Senator Cools is in the process of making a speech. She has five minutes left in which to complete her speech. She is moving a motion in this chamber to adjourn the debate in her name until the next sitting, with a view to completing her remarks at that time.

It is moved by the Honourable Senator Cools, seconded by the Honourable Senator LaPierre, that further debate on this inquiry be adjourned to the next sitting of the Senate in the name of Senator Cools for the balance of her time.

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

On motion of Senator Cools, debate adjourned.

QUESTION OF PRIVILEGE

The Hon. the Speaker: Honourable senators, we have now come to the end of our Order Paper. On Tuesday past, Senator Cools raised a question of privilege. I indicated that I would entertain further comment on the question of privilege when Senator Jaffer was in the chamber. This would be Senator Jaffer's opportunity, if she wishes, to make a comment.

• (1630)

Hon. Mobina S. B. Jaffer: Honourable senators, I wish to speak to the motion. I have no problem with the heading being changed, but I would ask that the heading be changed to "The Tragic Death of Aaron Webster."

I also should like to state that if I have offended anyone by my statement, it was not my intention. I sincerely apologize for that.

Hon. Anne C. Cools: Honourable senators, Senator Jaffer has apologized and I think that the matter should rest.

The Hon. the Speaker: A point of order has been raised. Does Senator Lynch-Staunton have a point of order?

Hon. John Lynch-Staunton (Leader of the Opposition): There is nothing in our rules that provides for debate on a question of privilege to continue over a period of three days. It is highly unusual for His Honour to invoke, according to the *Journals of the Senate*, rule 18(3), which quite specifically says that as soon as the Speaker determines that sufficient argument has been adduced to decide the matter, we continue with the next item of business.

There is nothing in the rules that indicates that we can suspend the debate and then resume it at another time. We have allowed this matter to go on because it was a delicate matter. Senator Jaffer has made her explanation. That, I would hope, is the end of it, and not a precedent.

Senator Cools: I had indicated earlier that the matter is essentially done with. Senator Jaffer has apologized.

Your Honour, I am trying to tell you I am withdrawing. Maybe you do not want to hear it.

The Hon. the Speaker: Senator Cools, I think you said that you are withdrawing the matter.

Senator Cools: Let me finish my few words.

The Hon. the Speaker: I think the concern on the point of order is that the comments on the matter of privilege are perhaps being misused in the sense that comment on the question of privilege is being used to do more than comment on a question of whether or not privilege has been breached.

If Senator Cools wishes the floor to ask to withdraw her question of privilege, I will give it to her, but I believe the matter of order is a good one. I could rule on whether it is in order to give another senator an opportunity to be heard. If Senator Lynch-Staunton wishes me to comment on that matter, I will, but we are at the stage where I believe Senator Cools wishes to withdraw. I should like to hear discussion on that matter, in which case I would agree. Otherwise, if a ruling is requested, then I would have no choice but to close the matter for comments and make a ruling.

Do you wish to withdraw, Senator Cools?

Senator Cools: That was my intention. What is before us right now? Is Senator Lynch-Staunton's point of order before us or are we back to the question of privilege?

The Hon. the Speaker: Senator Lynch-Staunton has raised a point of order. I do not believe there is any lack of order. He is entitled to get up and raise a point of order. He has. He has not asked for a ruling. If he wants me to, I will rule on it.

However, I think we are anxious to terminate this matter if we can. As I understand it, Senator Cools wishes to withdraw her question of privilege. Is that correct, Senator Cools?

Senator Cools: Honourable senators, no, one does not simply say yes. One has to make a statement to the chamber. I cannot simply say yes as to a question His Honour has posed. There is no provision in the rules for what is happening now. As a matter of fact, there is no provision in the rules for a point of order under a question of privilege. There is no provision at all in the rules for what is happening. What has happened here is that a discussion on privilege was postponed without leave of the Senate. What is happening is entirely unusual and unprecedented. I was trying to say earlier that there is nothing before us.

The Hon. the Speaker: I am sorry.

Senator Cools: I want to withdraw.

The Hon. the Speaker: Senator Cools has indicated that Senator Lynch-Staunton had no point of order. I am not sure whether there is anything in the rules one way or another, but a point of order under our rules can be raised. The point of order was that there was a question in Senator Lynch-Staunton's mind as to whether the comments on the question of privilege could be extended over a period of time. He has not asked for a ruling on that matter. I indicated earlier that I would await Senator Jaffer's return to the chamber before dealing finally with this matter. In that Senator Cools is continuing to address the question of privilege, I probably should, at this point, point out that I believe enough has been said and it is in the discretion of the Chair as to when the matter is finished.

The longer quote from one of our recent texts, Marleau and Montpetit, on page 125, is as follows:

> A Member recognized on a question of privilege is expected to be brief and concise in explaining the event which has given rise to the question of privilege and the reasons why consideration of the event complained of should be given precedence over other House business. Generally, the Member tries to provide the Chair with relevant references to the Standing Orders, precedents and citations from procedural authorities. In addition, the Member demonstrates that the matter is being brought to the House's attention at the first opportunity. Finally, the Member should state what corrective House action is being sought by way of remedy and indicate that, should the Speaker rule the matter a *prima facie* question of privilege, he or she is prepared to move the appropriate motion.

All of that has happened.

> The Speaker will hear the Member and may permit others who are directly implicated in the matter to intervene. The Speaker also has the discretion to seek the advice of other Members to help him or her in determining whether there is *prima facie* a matter of privilege involved which would warrant giving the matter priority of consideration over all other House business. When satisfied, the Speaker will terminate the discussion.

I should like to terminate the discussion. However, if Senator Cools wishes to withdraw her question of privilege, it is in order for her to do that, but it is not in order to continue to comment on the matter of privilege. That is why I put the question and I agreed it is in order.

Does Senator Cools wish to withdraw her question of privilege?

Senator Cools: I rise and I address honourable senators. I have been trying to do this all day. The only reason the issue was not withdrawn is that certain extraordinary steps were taken in respect of postponing the discussion. I am trying to say that Senator Jaffer has apologized. The matter is satisfied.

The Hon. the Speaker: Senator Cools, I am at the point where I believe this is a matter on which I must rule. I do not wish to give further time to this issue. I have heard enough in terms of making a decision as to whether there is a breach of privilege.

Let me for a final time see whether or not Senator Cools wishes to withdraw her question of privilege.

Senator Cools: Honourable senators, I rose several times today to withdraw the question of privilege. In any event, there is nothing before the chamber in respect of privilege because the motion that I had wanted to move before the chamber, under the prima facie, I gave notice yesterday that I am proceeding under rule 58(1). At any given moment, there are numerous procedural possibilities before us. By act of yesterday, I have withdrawn it. The only reason I did not withdraw it earlier today is that I was told that Senator Jaffer would be here. I thought it would be fitting, gentle and good to wait a few moments.

Senator Lynch-Staunton: Order.

Senator Cools: You are out of order, Senator Lynch-Staunton.

Senator Lynch-Staunton: You are making a mockery of this place.

• (1640)

The Hon. the Speaker: Do you withdraw your question of privilege, Senator Cools?

Senator Cools: This is about the fifth time that I have withdrawn my question of privilege. There is nothing before us; there is no need.

The Hon. the Speaker: The question of privilege is withdrawn, honourable senators.

BUSINESS OF THE SENATE

The Hon. the Speaker: We now proceed to the Notice Paper.

Motion No. 93, Senator Lapointe.

Senator Robichaud: Stand.

The Hon. the Speaker: Motion No. 95, Senator Gustafson.

Senator Kinsella: Stand.

The Hon. the Speaker: Motion No. 96, Senator Cools.

I am sorry, did Senator Cools say "stand"?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I rise on a point of order. Several days ago, I recall a situation where an item on the Orders of the Day was called and you did not hear the person in this house say whether or not that person wanted to adjourn debate or not.

We are in the exact same situation now, and I would like to know if Senator Cools would like to adjourn Motion No. 96, which stands in her name, in order for everything to be clear and to avoid having to come back to this point.

[*English*]

The Hon. the Speaker: Senator Cools has the floor. We are on Motion No. 96 standing in her name. She has the floor.

Senator Cools: Stand. I have not moved it yet.

The Hon. the Speaker: Do you wish this matter to stand?

Senator Cools: I have not moved the motion yet. It is not before the Senate chamber. I have not yet moved it.

The Hon. the Speaker: Is it agreed that the order standing in the name of Senator Cools will stand?

Some Hon. Senators: Agreed.

Senator Cools: It does not stand. It has not been moved. It is a notice.

The Hon. the Speaker: We will move on to the next item, which is the adjournment.

[*Translation*]

ADJOURNMENT

Leave having been given to revert to Notices of Government Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(*h*), I move:

> That when the Senate adjourns today, it do stand adjourned until at 2 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, December 4, 2001, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(1st Session, 37th Parliament)
Thursday, November 29, 2001

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02 Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd (01/06/06)	01/06/07	01/10/25	25/01
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01
S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19	01/10/17	Banking, Trade and Commerce	01/10/25	0	01/11/01		

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-33	An Act to amend the Carriage by Air Act	01/09/25	01/10/16	Transport and Communications	01/11/06	0	01/11/06		
S-34	An Act respecting royal assent to bills passed by the Houses of Parliament	01/10/02	01/10/04	Rules, Procedures and the Rights of Parliament					

GOVERNMENT BILLS (HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-6	An Act to amend the International Boundary Waters Treaty Act	01/10/03	01/11/20	Foreign Affairs					
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs	01/11/08	11			
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-10	An Act respecting the national marine conservation areas of Canada	01/11/28							
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology	01/10/23	0	01/10/31	01/11/01	27/01
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications	01/10/18	0	01/10/31	01/11/01	26/01
C-15A	An Act to amend the Criminal Code and to amend other Acts	01/10/23	01/11/06	Legal and Constitutional Affairs					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01
C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs					
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01
C-31	An Act to amend the Export Development Act and to make consequential amendments to other Acts	01/10/30	01/11/20	Banking, Trade and Commerce	01/11/27	0			
C-32	An Act to implement the Free Trade Agreement between the Government of Canada and the Government of the Republic of Costa Rica	01/10/30	01/11/07	Foreign Affairs	01/11/21	0	01/11/22		
C-33	An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts	01/11/06 (withdrawn 01/11/21) 01/11/22 (reintroduced)	01/11/27	Energy, the Environment and Natural Resources					
C-34	An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts	01/10/30	01/11/06	Transport and Communications	01/11/27	0	01/11/28		
C-36	An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities in order to combat terrorism	01/11/29	01/11/29	Special Committee on Bill C-36					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-38	An Act to amend the Air Canada Public Participation Act	01/11/20	01/11/28	Transport and Communications					
C-40	An Act 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	01/11/06	01/11/20	Legal and Constitutional Affairs					

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5	referred back to Committee 01/10/23		
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					
S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament (Committee discharged from consideration—Bill withdrawn 01/10/02)					
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01		
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	*Bill withdrawn pursuant to Commons Speaker's Ruling* 01/06/12	

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10 Energy, the Environment and Natural Resources	01/11/27	0			
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12							
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology					
S-22	An Act to provide for the recognition of the *Canadien* Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry	01/10/31	4	01/11/08		
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications					
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11	01/10/31	Transport and Communications					
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12	01/11/08	Banking, Trade and Commerce					
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19	01/11/20	Legal and Constitutional Affairs					

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

CONTENTS

Thursday, November 29, 2001

PAGE

ORDERS OF THE DAY

PAGE

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