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**THE HONOURABLE DAY HAYS
SPEAKER**

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THE SENATE

Wednesday, February 20, 2002

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

Prayers.

THE LATE HONOURABLE H.A. (BUD) OLSON, P.C.

TRIBUTES

The Hon. the Speaker: Honourable senators, we begin today with tributes to our former colleague the Honourable H.A. Bud Olson, P.C., who passed away on February 14, 2002.

Hon. Joyce Fairbairn: Honourable senators, it is with great sadness but with warm and rollicking memories that I pay tribute today to a dear friend and former Senate colleague, Bud Olson, who died last Thursday in Medicine Hat. He was truly a great parliamentarian, a passionate patriot for Canada and perhaps one of the toughest, most knowledgeable and outspoken ambassadors of his area, of his province of Alberta and of Western Canada that I have ever known.

As a hands-on farmer and rancher, love and respect for the land was the foundation of the political career he carved out over almost 40 years. It sustained him through troubled times; it sparked his political philosophy; and it undoubtedly gave him that wonderful mix of courage, honour, humour and, on occasion, mighty outrage that made him one of the most compelling speakers I have heard. Whether in a small county room or on an election platform or in his seat in the House of Commons or in the Senate, Bud commanded the attention of his listeners, whether they liked what he was saying or not. He was first attracted to the Social Credit Party, which dominated life in Alberta from 1935, when William Aberhart started a political prairie fire that was to last for 36 years. Bud was a trusted confidant and warrior with former Premier and Senator Ernest Manning, who guided our province through the excitement and the challenges of the development of the energy industry, as well as the burgeoning trade of agricultural products around the world.

Bud began a long life in Parliament in 1957, when he entered the House of Commons. As a Social Credit member, he won five elections, and as its House Leader became the strongest voice for that party in Ottawa. I met him back in 1962, when I was a new member of the Parliamentary Press Gallery. As a rookie, I learned the process from the pros. Bud Olson was one of the most outstanding debaters and procedural experts during those tough and defining years of minority governments in the 1960s. It was tough, but it was also a lot of fun.

As his party began to split up at the federal level, he chose to join the Liberal ranks and in 1968 became the first Minister of Agriculture in the government of Pierre Elliott Trudeau. The appointment could not have been a better one for the country,

but, regrettably, our party members were wiped out in the Alberta election during 1972.

Bud entered the Senate in 1977. He became Leader of the Opposition in 1979, was appointed to lead a super-cabinet ministry of economic and regional development in 1980, and he served also as Leader of the Government in this place from 1982 to 1984. This chamber really became his second home. He was vigorous in committee and comfortable in this place, where he played a very spirited role in anything to do with agriculture, the Constitution, the environment, and the list goes on.

Bud was never lost for words. In fact, he never needed a note at any point. Some of those who served in the Senate while he was with us will remember that. They will also remember that when aroused, he virtually lifted these rafters with his mighty voice and his rhetoric. It was great to hear if you were on his side of the house, but it was daunting if you were opposed.

Our Speaker, Senator Hays, and myself looked to Bud as a mentor. He was a very fine teacher. Privately, he was quiet, gentle and kind, with an infectious sense of humour. He was a tough political fighter.

As his health declined, the long trip back and forth from Southern Alberta to Ottawa took its toll. In 1996, he quietly made up his mind that it was time to go. As Leader of the Government in the Senate at that time, I was truly saddened because, in his heart, he felt that he had more left to give. He gladly accepted the role of Lieutenant-Governor of Alberta, which was offered to him by Prime Minister Chrétien.

As he left, Bud told me the one thing he wanted to do was to spend the time left to him urging his fellow Albertans, particularly young people, to recognize and take pride in the tremendous benefits of a strong and united Canada. He did so as vigorously as health would allow.

• (1340)

In 2000, Bud retired to his home in Medicine Hat with his beloved wife, Lucille. Last month they celebrated their fifty-fifth wedding anniversary. He always credited her with giving him the strength and the support that enabled him to fulfil his goals.

As everyone in this chamber knows, it is tough to maintain family life in politics, but Bud's inner devotion to his children, Bud Jr., Sharon, Andrea and Juanita, was steady as a rock. At some point, our conversations always centred on his pride in his children and grandchildren.

I was in Russia last week when Bud died, and I feel as though my life has been diminished. I am grateful for all those years of friendship and support, and I will never forget the strong and generous Albertan, who truly helped to change attitudes, as one of the finest citizens in what he believed to be the finest country in the world.

We send our deepest sympathies to Lucille, to his family, and to his multitude of friends. He will not be forgotten.

Hon. Dan Hays: Honourable senators, it is difficult to do justice to a life like Bud Olson's in a few minutes. I am grateful to Senator Fairbairn for her words. She summarized the highlights of Bud's life and some of his personal qualities very well.

Bud Olson was a product of his environment. He was born in Idlesleigh, in the heart of the area called the Palliser Triangle, which is a difficult area to farm. It was a land of heartbreak for many. The Olson family succeeded where many did not. The land shaped him. It gave him his toughness and some of his characteristics.

Bud was described as an unorthodox, independent-minded person. He did tend to stick to a position longer than a more moderate person would have thought he should.

Bud succeeded in three areas, and Senator Fairbairn touched on them very well: his family, his greatest success; his public service; and also as a farmer.

Senator Carstairs, Senator Taylor and I attended the funeral. Bud Jr., the third child in the family, gave a wonderful eulogy to his father and captured some of Bud by recounting family conversations. Bud Jr. pointed out that when the tide turned against Bud, he would observe to the whole family, "I do not want you to be under the false impression that this family is run as a democracy." That was something he would have said.

Bud's public service was remarkable. Senator Fairbairn outlined the important positions he held, culminating in becoming the Lieutenant-Governor of Alberta. If there was one thing in his life that transcended everything, it was that he was first, last and always an Albertan and a supporter of Albertans, in particular the agricultural community of that province.

In the mid to late 1980s, we experienced some terrible droughts in Alberta and Saskatchewan, particularly in Southern Alberta. We were in opposition at the time, and Bud was pressing very hard for a program to help those in need. I can remember him saying to me, "You know, this is a serious problem that will take a billion dollars to fix." Lo and behold, the government of the day came up with a billion dollars. The next day, Bud was on his feet saying that it should be \$2 billion. That was the kind of commitment that he made to his constituents.

Finally, Bud was a farmer and rancher. He loved to farm. I do not think he was ever happier than when he told stories about farming and how much he enjoyed sitting on a combine or driving a truck to take in a good harvest, which unfortunately was not every year in the area where he farmed.

As he aged, the farm became the responsibility of Bud Jr. Those senators who have farm backgrounds will understand that fathers and sons on farms have a difficult time. That period of transition does not come easily. Bud told me a story that I think says much about him. He loved to buy machinery; he loved to

operate machinery. Every time he bought a truck or combine, he said it was one of the best deals ever made. He and Bud Jr. bought some trucks, and he was, I think in Bud Jr.'s mind, interfering too much in the operation. On a weekend he was there to help, Bud said, "Do what you want, but under no circumstances drive that truck or take it anywhere. It is not fit to drive."

As soon as Bud Jr. was out of sight, the very thing, predictably, that Bud did was to get into the truck and drive it. Also, predictably, he got a few miles away from the farm and the axle broke. The very thing that he was worried about happening did happen. The way Bud dealt with the situation is interesting. He hitched a ride, got in his car, drove to the airport, phoned Bud Jr., told him about the breakdown and got on the plane and went to Ottawa.

Bud was a great friend, and I am grateful for having known him. His passing leaves a void that can only be partially filled by the memories we have of the times we shared with him, of the stories he told, of the issues he debated, and especially of the friendship and guidance he gave.

The Hon. David Tkachuk: Honourable senators, I rise to say farewell to our former colleague the Honourable Horace Andrew Olson — Bud to his friends.

He served his province as a member of the House of Commons for a decade and subsequently as a member of the Senate for nearly two decades. During the course of his 30 years in Parliament, he worked on a number of committees and held the post of Minister of Agriculture for four years. He was the Leader of the Government in this chamber for two years, from 1982 to 1984, with concurrent ministerial responsibilities.

Pierre Trudeau relied on his advice, and it was Bud Olson who was given the impossible task of selling the National Energy Program in Western Canada, a tribute to his bravery and his loyalty to his party.

Bud Olson was an exemplary parliamentarian, aggressive but plain-spoken in debate, noted for his knowledge both of issues and of procedure, and bringing with him a special understanding of the problems faced by agriculture and faced by farmers, among whom he was proud to be numbered.

Bud was, along with my friend Senator Gustafson, when I arrived here in 1993, the two people I listened to when they spoke about agriculture; both former members of the House of Commons, both from the Prairies, both farmers. It was too bad that he decided to leave so early.

When Bud left the Senate in 1996 at the age of 70 — and he could have served another five years — it was to return full-time to his native province and to continue to serve the people of Alberta in a different capacity, namely as His Majesty's representative, the Lieutenant-Governor. After retiring as Alberta's fourteenth lieutenant-governor in February of 2000 and despite his failing health, he maintained his continuing interest in Canadian and world affairs.

Honourable senators, Bud's family was a very important element of his life, as those of you who knew him well know. I am certain that not only his wife and four children but his 10 grandchildren found it difficult to lose the amount of time with him that he spent with us and on his other political duties. I also know they understood, as most of our spouses and families do, that government and governing were not just jobs to him — they were a passion.

Not only did Alberta lose a distinguished son on February 14, the country he served did as well.

• (1350)

Hon. Anne C. Cools: Honourable senators, I rise today to join colleagues on both sides in paying tribute to the life of Senator Bud Olson, a dear friend to me in the Senate and a dear friend to all of us here, even his opponents.

Honourable senators, it pains my heart that I was unable to attend his funeral a few days ago, but I do want his friends and colleagues and family members, particularly his wife, Lucille, to know that I was there in spirit with them.

Honourable senators, I wish to send my best and warmest regards, my support and my condolences to dear Lucille and to all the family members and communicate to them that my prayers are with them.

Hon. Willie Adams: Honourable senators, I should like to say a few words about my colleague Senator Olson. Almost 25 years ago, four of us were appointed at the same time: Senator Bud Olson, Senator Royce Frith, Senator Peter Bosa and myself. I still remember the first time I walked into this room, and it will be 25 years ago next April 5.

Senator Fairbairn talked about Senator Olson's time as Leader of the Government. I remind you that, in 1980, he was Minister of State for Economic Development and the Minister responsible for the Northern Pipeline Agency. I have memories of him travelling across Canada. At that time, 1980, there was a lot of exploration in the Western Arctic and Western Canada. He later became chairman of the Energy Committee.

Senator Frith was deputy leader in the Senate at the same time Bud Olson was Leader of the Government in the Senate. I remember Senator Bosa saying to me, "What's wrong with you and me, Willie? We were appointed at the same time, and now we have Senator Olson as leader and Senator Frith as deputy leader."

After the election of the Mulroney government, Senator Frith became Leader of the Opposition in the Senate.

I have many memories of those days. When I first came here, I did not know many people. My neighbour Senator Sparrow was here, as were Senator Graham and Senator Austin. There are a lot of new faces in the Senate now.

We lost a good friend in Senator Olson. He was concerned about exploration and used to travel quite a bit in the high Arctic. He was concerned about the Arctic and the Aboriginal people.

I extend my condolences to his family.

Hon. Jack Austin: Honourable senators, Senator Bud Olson was a colleague with whom I worked in this chamber for many years. He was also a seatmate for a short time — one of the most interesting persons to have as a seatmate.

Senator Olson was what I call a "legislative animal." He understood the temperature or the nature of the political process in the chamber, and he certainly understood it in cabinet and in caucus. He was a very effective person in delivering what he needed and often what he wanted, to do the job as a representative of Alberta.

Senator Olson was a real son of southern Alberta and southern Alberta's agriculture. He was brought up, as Senator Hays and Senator Fairbairn said, in that particular community, and it is a significant substratum of Alberta society. With Senator Olson, you knew that the voice for southern Alberta was authentic.

My wife's family takes some credit for his political career. He ran in 1957 against my father-in-law, Harry Veiner, who was the mayor of Medicine Hat. My father-in-law lost by a few hundred votes, and Senator Olson got on with his career, and my father-in-law got on with being mayor of Medicine Hat. He enjoyed that role. We in my family have always thought that it was a narrow escape for my father-in-law.

As a cabinet colleague, Senator Olson was wonderful to me. We had, in my day in cabinet, a serious discussion with the Province of British Columbia over an agreement dealing with Expo 86 in Vancouver. Bud Olson was at my elbow helping me with the negotiations with the Province of British Columbia. He had this famous caution, "Watch out for the tro-ins." I said, "Bud, what is a 'tro-in'?" He said, "You know, you think you have a deal, and then they say 'tro' in this and 'tro' in that, and then we'll sign. Watch out for the 'tro-ins'." He was a very practical man, a very real man, a very sensible man.

Hon. Marcel Prud'homme: Honourable senators, everyone seems to have a good story about Bud Olson, so I will give you a summary of what I have written about him.

In 1967, you may recall that the Honourable Ernest C. Manning wrote a book entitled *Political Realignment* that created a great deal of discussion among Social Credit Party members in Alberta. As you know, Bud Olson was first a member of the Social Credit Party before 1957, as was pointed out by Senator Austin, not a Liberal. He was defeated in 1958 and came back in 1962, 1963 and 1965 as a Social Crediter. At that time, I happened to accompany Mr. Pearson to Klondike Days in Edmonton, Alberta. That is where Mr. Pearson was highly acclaimed, as you all remember. Mrs. Pearson was overheard saying, "Why, if they like you so much, do they not vote for you?"

On the same trip with Mr. Pearson, I met a man at the opening of the Diefenbaker Lake Dam in Saskatchewan. The man was Mr. Bert Hargrave, a great rancher. I had never met a rancher before. I thought perhaps he had a few hundred head of beef, but it ended up that he had over 5,000. He said, "Come and see it." I arrived in Medicine Hat. He said, "There is a big party for Mr. Olson. The man is really in full reflection since Manning's book on political realignment. He may go Conservative or Liberal." That was enough for me. I was a very active Liberal for a long while. I immediately called the Prime Minister's Office and said that there is a man here who is ready to swing, and maybe he can swing him to the Liberal side. Well, he did, in 1968. Our esteemed former colleague Senator Earl Hastings helped to negotiate that event. At that time, he was a young Liberal organizer in Alberta. I do not know what took place there. All I know is that Mr. Olson ran as a Liberal in 1968.

• (1400)

Something took place in the agriculture industry that displeased Mr. Hargrave very much. He was the one who introduced me to Mr. Olson. Mr. Hargrave said, "If you pass that bill, I will defeat you." Guess what, Bert Hargrave, in 1972, 1974, 1979 and 1980 defeated Bud Olson.

On a special note, Mr. Olson opened up Western Canada to many of the Prud'hommes. Many members of my family are farming people. A strong, young cousin of mine said that he would love to learn English and go to work on a farm. He went to work on Mr. Olson's farm, learned English and became very well liked by Mr. Olson.

I thank Mrs. Olson for having been almost a godmother to a cousin Prud'homme from Saint-Eustache. I thank the Olson family and I offer them my most sincere condolences. I remember all the good Senator Olson did to help some members of my family experience Western Canada while living and working on the big Olson farm.

Hon. Nicholas W. Taylor: Honourable senators, my tribute to Bud Olson will be anecdotal as well.

Senator Olson and I were born about 25 kilometres apart in southern Alberta, three-quarters of a century ago, in the middle of the Palliser Triangle.

For those honourable senators who may be unaware, Captain John Palliser was an explorer who came out from England and Eastern Canada in the late 1800s and took the trip from Medicine Hat to Calgary. He said that the area would never be good for anything; it was hopeless, it was a desert. We laughed at him in 1917 and we laughed at him in 1945. Outside those two times, Palliser has been right.

Bud and I were raised in the middle of the dirty thirties. We were in the midst of a drought, and even the ribs of a rattlesnake would show as it hung from the edge of a fence post.

Although we were born in close proximity, I did not meet Bud playing ball or anything like that. I first met Bud Olson in the 1957 election, when he was only 31. He took on the best debaters of the day in southern Alberta. Southern Alberta had been a hodgepodge of political beliefs. There had been a Liberal in the area by the name of Dr. Gershaw for many years before that, but the area was known to be Social Credit.

When the elections came, I used to tell Bud that people would come down from the hills with their flat black hats and their Bibles under their arms and put him in power. In 1957, Diefenbaker captured the attention of the voters and out Bud went. In the next election, Bud won the riding back for the Social Credit Party and he stayed with the Social Credit Party right up to 1967, when Mr. Pearson asked him to cross the floor.

Bud Olson was always practical in debate. He was able to take any subject and remove it from being a Liberal or Conservative issue. He was able to speak to a matter from the point of view of whether it was good for Alberta or for Alberta farmers. He was particularly able at that, although he lost the election, unfortunately, in 1972.

I took the leadership of the provincial Liberal Party in 1974 and Bud was an adviser to me through the 1970s. Sometimes I paid attention to him; sometimes I did not. When I did not, I usually got into trouble. When I paid attention, he was usually right.

At that time, the national Liberal party wanted us to merge with the provincial Social Credit Party. Much to the chagrin of the journalists, Bud and I agreed that joining with the Social Credit Party would be political necrophilia. The same thing might happen to our friends on the opposite side if they contemplate joining the Canadian Alliance. In other words, history might be repeating itself. I will let that go, as that is something members opposite will have to decide.

Sometime in the 1970s — as if living in Alberta as a Liberal was not dangerous enough — Bud took up flying lessons to become a pilot. He did fairly well in the ultra-light aircraft. Learning to fly in southern Alberta is not hard in some ways, if you have anything that has wings, you just turn and face west and the wind will carry you up in the air in no time at all. Bud was a fairly able pilot, but when his son had a crash, it frightened him, and so he gave up flying.

When Bud became Lieutenant-Governor of Alberta, I took his place in the Senate. That was six years ago. Bud had his own style and approach to things. One of the first things he did was to move the Lieutenant-Governor's levee, which was always held in Edmonton. Edmonton felt that was at least one thing they got: If Calgary had the oil business, they at least had the levee. Bud took the levee, went right over Calgary, to Medicine Hat, and held the levee down there, much to the chagrin of the Southam press who did not own a paper in Medicine Hat at the time. Bud said he planned to do things the way he saw fit.

Bud's debating skills always amazed me. Honourable senators must remember that where we went to school, there was no senior matriculation. I had to move away in order to go to university to become an engineer. Bud was smart. He did not finish high school, although he was by far the best read and most knowledgeable person in politics in the region, perhaps because he was self-taught. He always amazed me with his grasp of topics. I realize that was because he was not encumbered by too much schooling and foolishness that he would have learned like others of us who went to university.

Bud also had a finely developed sense of humour. It was quiet, but when he would roll those brown eyes, you knew something was coming.

One of Bud's characteristics that sticks in my mind is that he was never mean to anybody. He was always kind. Even in debate he might be rough with his words, but I never heard him abuse anyone working for or beside him. He was an outstanding person in that way.

I know there is little I can say or do now to ease the sense of loss for Lucille and the family. However, I do hope they take some consolation from the fact that there are literally hundreds of Canadians, and particularly Western Canadians, who believe that Canada is that much better as a country because Bud lived in it.

SENATORS' STATEMENTS

THE LATE MINNIE WHITE

TRIBUTE

Hon. Ethel Cochrane: Honourable senators, I rise today in tribute to one of Newfoundland and Labrador's finest musicians, Mrs. Minnie White, who recently passed away at the age of 85.

Over the course of her professional music career, she received countless awards and accolades at home, nationally and internationally.

For Newfoundlanders and Labradorians, however, she was an ambassador of traditional music and the accordion. Minnie's legacy is not only that she fostered and inspired young talent, but that she gave each of us a deeper appreciation of our roots. She skilfully blended the music of the province's four prominent cultures, English, Irish, French and Scottish, to produce strong, toe-tapping music that uniquely represented island culture. Through her dignified stage presence, Minnie White helped lead the resurgence in our province's traditional music and inspired a whole new generation to take pride in our musical heritage.

While it was with sadness that we said farewell to Newfoundland's "First Lady of the Accordion," we remain grateful for the lifetime of music that she gave and the remarkable legacy she left for generations to come.

[Senator Taylor]

• (1410)

[Translation]

HEART AND STROKE AWARENESS MONTH

Hon. Yves Morin: Honourable senators, February is the month closest to our hearts. Health expenditures directly or indirectly related to heart disease and stroke total over \$20 billion yearly. Worse still, these diseases are the highest-ranking cause of deaths in Canada, in excess of 80,000 annually.

[English]

The truth is that heart disease and stroke have touched the lives of most Canadians.

[Translation]

Heart and Stroke Awareness Month is a good time to acknowledge the contribution of those who devote themselves to education, research, prevention and treatment of cardiac and cerebrovascular diseases.

[English]

The Canadian Institutes of Health Research, through its Institute of Circulatory and Respiratory Health, under the able direction of Scientific Director Dr. Bruce McManus from Vancouver, is working in partnership with the Heart and Stroke Foundation to support innovative research that addresses the most relevant and pressing issues.

Monday was Heart Day on the Hill. We were visited by the President of the Heart and Stroke Foundation, Ms Carolyn Brooks, and the President of the Canadian Cardiovascular Society, Dr. Ruth Collins-Nakai from Edmonton.

The Heart and Stroke Foundation is a federation of ten independent provincial foundations and one national foundation and is supported by a force of more than 250,000 volunteers across Canada. The foundation funds approximately \$40 million annually of peer-reviewed heart disease and stroke research in Canada. This represents the largest single source of funds for research in heart disease and stroke in the country.

Both the Institute of Circulatory and Respiratory Disease and the Heart and Stroke Foundation are supporting Dr. Salim Yusuf of McMaster University in Hamilton. Dr. Yusuf was responsible for the major discovery that the drug Ramipril can reduce the risk of heart attack by 25 per cent in high-risk patients. Now, in the SHARE study, he and his colleagues are looking at the links between ethnicity, risk factors and heart disease rates to find out if genetic or lifestyle differences are behind markedly different risks for heart attacks among different ethnic groups.

Dr. Yusuf and his team are part of a strong, integrated community of researchers working in almost every Canadian province to increase our knowledge about cardiovascular disease.

[Translation]

Thanks to the knowledge contributed by research, lives can be saved and people with these conditions will be able to enjoy a better quality of life. As well, these discoveries will make it possible to better detect people at high risk and will provide Canadians with information that will help them choose a healthy lifestyle.

Honourable senators, although we each have but one heart and one voice, we can unite all of our hearts and voices in support of research and of those who are the lifeblood of an effective national health system.

[English]

ROUTINE PROCEEDINGS

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

NINTH REPORT OF COMMITTEE TABLED

Hon. Jack Austin: Honourable senators, I have the honour to table the ninth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, dealing with the revised *Rules of the Senate*.0000000

Honourable senators, this February 2002 edition of the *Rules of the Senate* incorporates the amendments made on March 15, 2001 regarding the addition of two new committees; on September 25, 2001, regarding the name change of the Rules, Procedures and the Rights of Parliament Committee; on October 31, 2001, regarding the name change of the National Security and Defence Committee; and on December 14, 2001, regarding senators indicted and subject to judicial proceedings.

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

Hon. E. Leo Kolber: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the date for the presentation by the Standing Senate Committee on Banking, Trade and Commerce of the final report on its study on the present state of the domestic and international financial system, which was authorized by the Senate on March 20, 2001, be extended to Thursday, March 27, 2003.

QUESTION PERIOD

NATIONAL DEFENCE

JOINT TASK FORCE 2—AUTHORIZATION OF COUNTER-TERRORIST OPERATIONS

Hon. J. Michael Forrestall: Honourable senators, my question is with regard to Joint Task Force 2. Can the Leader of

the Government in the Senate tell us exactly who is charged with authorizing JTF2 to engage in counter-terrorist operations? Does authorization to use deadly force rest only with the Minister of National Defence or does it rest solely with the Prime Minister?

Hon. Sharon Carstairs (Leader of the Government): Honourable senator, as do all members of our armed forces, Joint Task Force 2 take their immediate orders from line of command, but ultimately the Minister of National Defence is responsible for the administration of that department.

Senator Forrestall: Honourable senators, is it not true that only the Prime Minister can authorize use of JTF2 because of its specialized functions with regard to the use of deadly force, both abroad and here in Canada?

Senator Carstairs: Honourable senators, that is not my understanding of the line of responsibility for JTF2. However, if I am incorrect in that, I will get back to the honourable senator as quickly as possible.

MINISTERS AUTHORIZED TO RECEIVE SIGNIFICANT INCIDENT REPORTS

Hon. J. Michael Forrestall: Does the Leader of the Government in the Senate, as a minister of the Crown, and the only minister in this chamber, receive copies of significant incident reports and/or situation reports from the Privy Council Office with regard to military operations? If not, is there a reason why not?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not receive such incident reports. I can only assume that is because it is not within my area of responsibility. After all, my responsibility is as Leader of the Government in the Senate. That makes me a member of the cabinet. When the full cabinet is informed of certain incidents, I obviously am informed, but I am not given any individual briefings.

Senator Forrestall: Honourable senators, I would not want to comment on where that leaves the Senate, apparently, in the eyes of the cabinet.

Has the minister ever seen a written report on the activities of Joint Task Force 2?

Senator Carstairs: No, honourable senators, I have not.

AFGHANISTAN—JOINT TASK FORCE 2—BRIEFING OF CABINET ON INCIDENT INVOLVING TAKING OF PRISONERS

Hon. J. Michael Forrestall: Honourable senators, can the minister tell the chamber on what date she first learned that members of Joint Task Force 2 took prisoners in Afghanistan?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I indicated in response to a similar question last week, I heard of the JTF2 apprehension of prisoners at the same cabinet meeting at which the Prime Minister learned that information.

• (1420)

Senator Forrestall: Honourable senators, who told the Leader of the Government that Canadian Forces took prisoners in Afghanistan? How exactly was that information communicated to the minister?

Senator Carstairs: Honourable senators, I am in a difficult situation here. I do not want to divulge anything from cabinet that is not already public knowledge. I would not want it to be held against me for sharing that information.

At that cabinet meeting, we had a report from the Minister of Defence. That information is public knowledge. In that report, we were told about the arrest of the individuals in Afghanistan.

[Translation]

NORTH ATLANTIC TREATY ORGANIZATION

MODERNIZATION OF ARMED FORCES EQUIPMENT TO MEET OBLIGATIONS

Hon. Pierre Claude Nolin: Honourable senators, my questions concern more specifically Canada's military spending in the context of its obligations to NATO.

Yesterday, the *Financial Times* referred to the comments made by NATO's secretary-general, Lord Robertson, regarding the decision by the President of the United States to allocate an additional \$48 billion to the United States defence budget.

According to Lord Robertson, if the Americans do not take any measures to facilitate technological transfers and military equipment exports to their allies, the operations of NATO or of future international military coalitions could be seriously jeopardized.

NATO's secretary-general also pointed out that Canada has an obligation to invest in certain strategic sectors of the Canadian armed forces operations, in order to improve our forces' ability to intervene during an armed conflict. According to Lord Robertson, Canada must either modernize its military forces or face a decline in its influence at the international level.

Does the minister recognize that allocating an additional \$1.2 billion to the Department of National Defence over the next five years will be totally insufficient to modernize the equipment used by our troops, since \$900 million of that amount is earmarked for security measures and operation Apollo, and only \$300 million for the procurement of military equipment?

[English]

Hon. Sharon Carstairs (Leader of the Government): There are several parts to the honourable senator's question.

Honourable senators, the government has not made any decisions at this point with respect to enlarging its commitment to NATO, although there have been some agreements with the United States about partnerships in technology, which would have some impact on equipment in the future.

As to the other aspect of the honourable senator's question, I do not have any knowledge, but if I can obtain some information, I will share it with the honourable senator.

[Translation]

NATIONAL DEFENCE

CONSEQUENCES OF UNDER-FINANCING

Hon. Pierre Claude Nolin: In light of the numerous problems that have delayed the deployment of Canadian troops and military equipment in Afghanistan, does the minister recognize that the comments of NATO's secretary-general confirm those made by several other observers — including the Auditor General of Canada — to the effect that the chronic under-financing of the Canadian Forces could increase Canada's inability to fulfil its international commitments to NATO and to the international coalition against terrorism?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator is addressing the problems of arranging for the strategic lift of our troops to Afghanistan.

The reality is that only two of our allies have strategic lift capacity. One of them is the United States and the other is the United Kingdom, both considerably larger countries than Canada. Other countries do not have that capacity. In my view, it would not be financially feasible to provide at any time for all of our airlift needs in-house.

However, the government is committed to enhancing the ability of the Canadian Forces to deploy anywhere around the globe. That is why a committee has been put into place with respect to this initiative.

[Translation]

UNITED STATES—REVISION OF POLICY CONCERNING EXPORT OF MILITARY EQUIPMENT AND TECHNOLOGY

Hon. Pierre Claude Nolin: Every three months, NATO puts out a publication for the general public showing the military spending of all NATO countries. All these tables are proportionate to population and Canada is at the bottom of the list. The Auditor General has often pointed out that, when it comes to military spending, Canada does not compare to any of its allies.

My final question as well has to do with the speech by NATO's secretary-general. The article in the *Financial Times* also mentioned that the U.S. State Department is now reviewing its military equipment and technology export policy with a view to greater flexibility.

Since Canada is an important trading partner of the United States in this area, can the minister tell the members of this chamber whether the federal government was consulted by the State Department in this connection?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know of any specific negotiations or discussions that have taken place between the Secretary of Defence of the United States and the Minister of Defence here in Canada.

The question of equipment is always interesting. Defence expenses are part of the overall budgetary policy of the government, which has been gradually moving to more expenditure in the defence field. At this point, we are not, I think, at maximum levels in terms of need.

However, it was interesting to watch CNN the other night and see 10 minutes devoted to our Coyote, the new armoured vehicle that is being commanded by our troops in Afghanistan. It is being commended by the Americans. The Americans also think that we have the best rifles, and they have now accepted that our camouflage uniforms are the way to go.

FOREIGN AFFAIRS

UNITED STATES—ALLEGED LANDING OF FORCES IN IRAQ

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. It concerns a report out of *Pravda* this morning. It reports a Japanese newspaper stating that the Americans have landed in Iraq, in the northern no-fly zone near the Turkish border. The Americans want to examine the opportunities for a military campaign. Is the minister aware of this information and can she verify its accuracy?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have no information with respect to any attack by the United States or that their forces have landed in Iraq.

IRAQ—EFFORTS OF GOVERNMENT TO HAVE BORDERS REOPENED FOR UNITED NATIONS INSPECTORS

Hon. Terry Stratton: Honourable senators, my concern is that this appears to be a unilateral step on the part of the United States. I did not expect the minister to be able to answer. It would appear that the United States intends to go into the no-fly zones in the northern and southern parts of Iraq. That information should not be a surprise to us because those are areas they can control.

My concern is that while we have been pushing for a time to get some agreement as to UN inspections, I am not satisfied that Canada has done all it can to get the UN inspectors back into Iraq. If Canada had played a leading role to this end, perhaps the events that are supposedly taking place in Iraq now would not take place.

Can the minister give me an update or any kind of statement at all as to what the Canadian government is doing to have UN inspectors put back in Iraq, utilizing the historic role of Canadians in leading such an event? I would expect, and I believe, that we are highly trusted in the Mideast.

• (1430)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Canadian government has for a long time insisted that Iraq must live up to its United Nations Security Council obligations and permit UN arms inspectors to ensure that Iraq neither produces nor stores weapons of mass destruction. It is our view that Iraq's unwillingness to accept these inspectors cannot continue indefinitely. Our efforts have been focused through our partnerships and our friendships in the Middle East to ensuring that Iraq meets its commitments.

[Translation]

IRAQ—COMMENTS BY PRIME MINISTER

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate. A little earlier this week, the media reported a telephone conversation between one of the deputy clerks of the Privy Council, Mr. Laverdure, and his counterpart at the White House, Ms Condoleezza Rice, security advisor to President Bush. The question of Iraq was raised. This was a call placed by Ms Rice to her counterpart, Mr. Laverdure, during which she asked him how the statements the Prime Minister of Canada made in Russia and in Berlin about Iraq should be interpreted. Did these conversations touch on what is being reported today in *Pravda*?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is the position of Canada that nothing has happened that requires Canada to make a decision on actions in Iraq that would be any different than our present decision, which is that Iraq has been under UN sanctions. It is the United Nations that has made decisions with respect to any actions taken in Iraq. That is and continues to be the position of the Government of Canada.

SCRUTINY OF REGULATIONS

GENERAL COUNSEL TO JOINT COMMITTEE— LETTER PUBLISHED IN *THE HILL TIMES*

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is not to the Leader of the Government in the Senate but rather to the Joint Chairman of the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations.

Could the joint chairman advise this house if the committee requested that the general counsel to the Standing Joint Committee for the Scrutiny of Regulations, François-R. Bernier, write the letter that was published in *The Hill Times*?

My honourable colleague the Leader of the Opposition in the Senate has referred to one sentence in the letter that says:

Additionally, I expect Senator Hervieux-Payette, a minister in the Trudeau administration, may take exception to being identified as anything other than a Liberal.

In the original article to which Mr. Bernier was replying, reference was made to "Tory Senator Hervieux-Payette."

To my friends opposite, my family name as used by members of my family does not subscribe to the language or the ideology of a certain Kinsella who had observations to make in today's *National Post*. The headline says, "Senior MP not a true Grit, Kinsella says."

Being from a different family and school of thought, I do wish to raise a rather serious issue. It is a curious one. Yesterday, in the other place, a question of privilege was raised because of this letter that was sent by an officer of a joint committee. If the Speaker of the other place decides on the privilege, it may affect the privileges of this place.

Could the joint chairman of the committee share with the house how she expects this matter to be resolved? Could she inform the house as to what is going on?

[Translation]

Hon. Céline Hervieux-Payette: Honourable senators, some people in Quebec were just born Liberals, and there is nothing that can be done to change that. In my case, it is genetic.

I have read Mr. Bernier's letter, as has everyone else. Honourable senators will understand that I could not have written such a letter 15 years ago, of course, since I have not been the co-chair of the committee for 15 years. Our legal counsel is probably one of the best legal experts I have met in my life. He does an admirable job, as part of an exceptional team. The facts reported in the first article — I emphasize, the facts — were so glaring that I can, in part, understand what motivated Mr. Bernier's actions.

As co-chair of the Joint Standing Committee on the Scrutiny of Regulations, I intend to leave it up to the Speaker of the House of Commons to rule on the question of privilege. Our committee executive will hold the matter in abeyance until we hear from the Speaker of the House of Commons. We are not going to usurp that prerogative. As soon as the Speaker of the House of Commons has made his response public, our committee will be able to address the matter.

This committee has extremely important and substantive issues to study, and some of the edited reports have even been published in advance on the Web sites of political opponents. It is certainly the most talked-about committee on the Hill right now. If this serves to publicize the Joint Committee for the Scrutiny of Regulations, I certainly will not complain, if it makes more people aware of it. It is probably the most obscure committee on the Hill. It is a committee I sit on out of conviction. The membership of the committee is of exceptional quality, and attendance has increased noticeably in the last few weeks, given some of the topics. Regular attendance is extremely important. I think that the fact that parliamentarians have such a significant role to play when it comes to regulations demonstrates the degree of democracy in our system, and I am very proud of this.

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in

[Senator Kinsella]

this house a response to a question raised in the Senate on February 7, 2002, by Senator Grafstein regarding Her Majesty Queen Elizabeth II and the possibility of a Golden Jubilee Commemorative Medal.

HER MAJESTY QUEEN ELIZABETH II

POSSIBILITY OF GOLDEN JUBILEE COMMEMORATIVE MEDAL

(Response to question raised by Hon. Jerahmiel S. Grafstein on February 7, 2002)

2002 marks the 50th anniversary of Her Majesty The Queen's Accession to the Throne. The Government of Canada plans to commemorate and celebrate the Golden Jubilee throughout 2002, culminating with the Queen's royal visit in October. The Department of Canadian Heritage has developed a Golden Jubilee Strategy, taking into account the challenge of how best to lay the foundation for an anniversary of truly national significance. The strategy encompasses events and activities between February and October 2002. It is the Government of Canada's intention to develop a Golden Jubilee medal program. The medals would be awarded during 2002 only and would focus on the achievements of the past 50 years. The Chancellery of Government House would administer such a program.

[English]

ORDERS OF THE DAY

SIR JOHN A. MACDONALD DAY AND SIR WILFRID LAURIER DAY BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-14, respecting Sir John A. MacDonald Day and Sir Wilfrid Laurier Day, and to acquaint the Senate that they have passed this bill without amendment.

• (1440)

CLAIM SETTLEMENTS (ALBERTA AND SASKATCHEWAN) IMPLEMENTATION BILL

THIRD READING

Hon. Jack Wiebe moved the third reading of Bill C-37, to facilitate the implementation of those provisions of First Nations' claim settlements in the Provinces of Alberta and Saskatchewan that relate to the creation of reserves or the addition of land to existing reserves, and to make related amendments to the Manitoba Claim Settlements Implementation Act and the Saskatchewan Treaty Land Entitlement Act.

He said: Honourable senators, I want to speak briefly to Bill C-37 to say my thanks to honourable senators on both sides of the house and the members of the committee for their careful study and consideration of a very important piece of legislation which will benefit the provinces of Saskatchewan and Alberta, as well as the province of Manitoba, thus bringing the claim settlements of our First Nations obligations into to the modern era.

I thank you for your cooperation and, in anticipation, your support for this bill at third reading.

Hon. Janis G. Johnson: Honourable senators, I, too, wish to address Bill C-37, in respect of First Nations' claim settlements implementation.

This bill came through the Aboriginal Peoples Committee, and it has been reported without amendment. Our deliberations were brief, but, I believe, thorough. A bill with so much to recommend, it does not take up much time in committee. I congratulate all of my colleagues on the job we have done.

I am pleased this bill extends the provisions it contains to Alberta and Saskatchewan. Similar provisions have been in effect in my province of Manitoba since October 2000, with the passage of the Manitoba Claim Settlements Implementation Act. This means that, if and when Bill C-37 passes, 97 per cent of the outstanding reserve expansion commitments based on claims that have been made by the government to date will come under these useful provisions if the affected First Nations so choose, since 97 per cent of these communities have been made in the three prairie provinces.

Let me provide honourable senators with some background on this technical bill, as it has been two months since this house last debated it.

Bill C-37 has two main goals in its 14 short clauses. Both relate to facilitating the practical implementation of claim settlements that are concerned with reserve expansion. First, it aims to speed up the reserve creation process. In part, this is accomplished by replacing the Governor in Council's authority to set apart selected lands as reserves with the minister's authority to exercise that function. Ministerial sign-off is clearly the quicker process and speeding up this process is clearly helpful to First Nations.

Second, Bill C-37 aims to create greater economic stability for both First Nations and third parties with interests, or proposals for such, on lands those nations have selected to fulfil reserve expansion commitments. It will do this by letting First Nations enter into negotiations and conclude agreements for development with third parties before the land officially becomes a reserve, and even before it is purchased, neither of which is, as it stands, allowed under the Indian Act. Having an agreement in place while any other prerequisites to reserve creation are cleared will no doubt greatly help both parties involved. It also means that First Nations can choose lands with existing and evolving developments instead of simply choosing land with the fewest interests to clear.

This provision also helps to achieve the first goal of the bill. Proof positive of what we all know — that the Indian Act is largely irrelevant to, and often an impediment to, today's relationship between Canada and First Nations — the act does not address reserve creation and prevents the Crown from setting aside as a reserve any lands with existing third party interests. The federal additions to reserve policy in order to accommodate this situation requires that any First Nation that chooses land with existing interests must first clear or accommodate those interests in a way satisfactory to Canada, the First Nation and the third party. By providing increased security for both parties, Bill C-37 may make the accommodation of existing interests easier and more secure for third parties, who will thus likely be more willing to come to the table.

Honourable senators, this bill also comes with a measure of flexibility, as did its Manitoba counterpart. First Nations may opt into the bill scheme if they feel it will be helpful. If not, they can continue to use the older Indian Act governed scheme. If pre-reserve designations are accepted by the minister, they come into force if and when the land is officially set aside.

Let us put this into perspective. I mentioned that 97 per cent of the claims-based reserve expansion commitments in Canada could be found in Alberta, Saskatchewan and Manitoba. As of September 2001, 109 specific claims had been settled in these provinces, 30 in Alberta, 46 in Saskatchewan, and 33 in Manitoba. There are still 45 under review or negotiation in Alberta, 40 in Saskatchewan and 30 in Manitoba. I am not including specific claims rejected by the government and under review by the Indian Specific Claims Commission, which may eventually lead to further settlements.

Let us examine one section of one of these: the land promised in Treaty Land Entitlement, or TLE, agreements — a kind of specific claim settlement that typically includes reserve expansion commitments — in Saskatchewan. There are 29 First Nations covered by TLE agreements in that province that are potentially engaged in land selection and working through the prerequisites for chosen lands to be set aside as reserves. Potential outstanding reserve expansions of these 29 bands alone amount to about 1.65 million acres. Some of these have been selected and are undergoing evaluation and agreement negotiations. Other First Nations have yet to select, or buy under a willing seller/willing buyer arrangement, land to be converted to reserve status.

Under the government's additions to reserve policy, there may be hoops to be jumped through before land can be officially set aside as a reserve. For example, a First Nation must negotiate a services agreement with the municipality in which it will expand its land base to ensure service provision to that land, now the property of the federal Crown instead of the province, thus partially governed by separate laws and regulations applying only to First Nations. Given the complexity these agreements can often represent — and I know how complex they can be having studied this — the difficulties of harmonizing various bylaws and so forth, these negotiations can take years.

Therefore, this is only one of the many prerequisites for reserve expansion or creation. Title must be cleared, the land must undergo an environmental review and a survey. The proposal for expansion must be evaluated for cost-effectiveness, and unless the First Nation has signed into a framework agreement covering tax losses, the municipality must negotiate for compensation with the provincial and/or federal Crowns to help offset lost tax revenues that occur when an area under its jurisdiction is set apart as non-taxable reserve land. Add to this the time already spent in claim negotiations, and the fact that non-contiguous parcels of land must be cleared and set aside as reserves through separate processes, literally years can pass before a claimant First Nation is finally free to take advantage of land to which it has a right since Canada's lawful obligation to a First Nation first arose and, likely beyond that, from time immemorial.

Given the immense amount of land we are talking about and the number of First Nations affected by these policies and the legislation now before us, it becomes obvious that any enactment that can accelerate the process whereby lands become reserve land is helpful. In Manitoba, at least two First Nations with TLE settlements have been paying taxes on property that they bought on a willing seller/willing buyer basis with settlement funds while they negotiate municipal service agreements with less than eager municipalities. While this fact may bring forth a cheer from the official opposition in the other place, this kind of situation can be crippling for First Nations who may not have budgeted for such an expense and may now be facing a lengthy — and expensive — stall in their attempt to have the land set aside.

• (1450)

Although this proposed legislation will not have any direct effect on the forging of municipal service agreements, the point is still relevant: the pressure created by using Bill C-37 to come to solid agreements with third parties in advance of reserve creation could potentially stimulate the movement of stalled negotiations and ultimately speed up the reserve creation process.

In any case, this process — from the time of claim settlement to the setting aside of the chosen lands — is complex and can often be quite lengthy, and First Nations need it to be as free of obstacles as possible. Bill C-37 laudably contributes to this removal of obstacles. Honourable senators are also aware that bands need economic opportunities to help them to become financially more independent. Having these opportunities will likely be a big step toward solving at least some of the many problems faced by Aboriginal peoples on reserves today.

Honourable senators, all across Canada, First Nations are entering into fruitful partnerships with industries and businesses. The Membertou Nation of Cape Breton recently received ISO 9001 certification to indicate that their reserve is open for — and to — business and is well equipped to form transparent and productive working relationships. More and more businesses are realizing the benefits of involving First Nations in their

development plans. Businesses and Aboriginal groups in Manitoba got together only a few weeks ago to demand that the minister clarify his department's policy of taking over the financial affairs of First Nations in the red and denying their creditors their dues, a policy which makes securing credit for entrepreneurial projects tough for First Nations and tightens the cycle of fiscal dependence. The members of many First Nations are showing themselves to be shrewd business people who are fully capable of creating and taking advantage of opportunities. We must ensure that the law and government policy do not get in the way of these opportunities becoming available as expeditiously as possible.

Speaking of expeditious processing, it is worth noting again, as I did in my last address to senators, that the administrative process for the Manitoba Claim Settlements Implementation Act is still unfinished. Specifically, the instruments needed for the minister to accept pre-reserve designation and to set aside land as a reserve in place of the Governor in Council are not yet in place.

As I mentioned earlier, this act has been in effect for 17 months now without a way for First Nations in the province to take advantage of the leverage that signing on to it could provide. I do understand that delays of this kind are not unusual, but they are disappointing. DIAND officials who appeared as witnesses assured the members of the Aboriginal Peoples Committee that the necessary instruments will shortly be in place, and I am hopeful that this is true, especially because similar instruments will be adopted in Alberta and Saskatchewan when the current Bill C-37 is passed. I am glad that this means — we hope — that the First Nations of those provinces will not have so long to wait to take advantage of this excellent bill.

Honourable senators, let me once again congratulate the government and our committee on a job well done and add the support of my party to the speedy passage of Bill C-37.

Motion agreed to and bill read third time and passed.

CRIMINAL LAW AMENDMENT BILL, 2001

REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourteenth report of the Standing Senate Committee on Legal and Constitutional Affairs, (Bill C-15A, to amend the Criminal Code and to amend other Acts, with amendments) presented in the Senate on February 19, 2002.

Hon. Lorna Milne moved the adoption of the report.

She said: Honourable senators, this report concerns Bill C-15A, to amend the Criminal Code and to amend other acts. Your committee has proposed two amendments to this proposed legislation that I will outline for you. Before proceeding to the specific details of the amendments, I wish to first provide background information on the bill so that we are not discussing the issues in a vacuum.

Bill C-15 was originally introduced in the other place in March 2001. The bill dealt with a wide range of criminal law matters, some more controversial than others. As honourable senators are aware, the bill was eventually divided into two parts. Bill C-15A that is before the Senate now deals with six areas of criminal law: child pornography, stalking, home invasions, disarming police officers, procedures for the wrongfully convicted, and general procedural amendments.

Honourable senators, your committee was generally supportive of all the provisions in this bill. I believe I can safely say that there is unanimity within the committee that these provisions substantially improve the Criminal Code. The committee has found it necessary to clarify two parts of this bill to ensure that the courts uphold the legislative intent of the bill.

Both amendments relate to the child pornography provisions in the Criminal Code. Generally speaking, the bill makes it a crime to use the Internet to view child pornography, and any person who uses the Internet to transmit child pornography to another person is guilty of an offence. Furthermore, the court can order an Internet service provider to remove child pornography from its computers, should any be found there.

The first amendment addresses a flaw in the bill, as pointed out by Senator Nolin during his second reading speech. Under the child pornography provisions of the Criminal Code, a person is allowed to possess child pornography if the material has either “artistic merit or an educational, scientific or medical purpose.” This defence is found in section 163.1(6) of the Criminal Code. It exists because of the Charter and decisions of the Supreme Court of Canada, including the case of *R. v. Sharpe*. As originally drafted, the new provisions in this bill concerning child pornography on the Internet did not allow for these constitutionally mandated defences.

The committee has recommended that clause 5 of the bill be amended to add the defences of “artistic merit or educational, scientific or medical purpose” to the child pornography provisions in the bill. I note that this amendment was supported by former Minister of Justice Anne McLellan when she testified before your committee.

The second amendment deals specifically with the way that Internet service providers are treated under the child pornography provisions of the Criminal Code. There was some concern raised during the course of the committee’s hearings that Internet service providers could be found guilty of an offence under this act even though they did not know that their systems were being used to transmit child pornography from one person to another. The Canadian Association of Internet Providers was particularly concerned about this point. They argued that, as written, the provisions could allow for an Internet service provider to be guilty of an offence without even knowing that child pornography was on their system.

Honourable senators, the amendment passed by your committee attempts to address that concern by adding a subsection to the child pornography provisions of the code. This second amendment also amends clause 5 of the bill by adding

two subsections to section 163.1 of the Criminal Code. The substantive portion of the amendment states:

(3.1) A custodian of a computer system who merely provides the means or facilities of telecommunication used by another person to commit an offence under subsection 163.1(3) does not commit an offence.

As there were errors in the English translation that went before your committee, honourable senators, the vote was based entirely on the French text that was provided to us, with the clear understanding that the English text would be corrected to agree with the French version. As such, the amendment passed on division.

As for the other five elements of the bill, the committee did have significant discussions on the merits of the new provisions for clearing the names of the wrongfully accused and the procedures for pre-trial conferences. In the end, no amendments were proposed to any of these elements of the bill, although some senators abstained from voting on some of the clauses that were the subject of the debate.

Hon. Tommy Banks: Honourable senators, I wish to ask Senator Milne a question in respect of an amendment to which she has just referred, that being 163.1(6). It is my understanding that the provider of an Internet service cannot be convicted of child pornography if he or she merely provides the service. Is that correct?

Senator Milne: That is correct.

• (1500)

Senator Banks: My difficulty is with regard to the intent, which I understood to be to ensure that an Internet provider who unknowingly transmitted child pornography ought not to be charged. The amendment, however, makes no reference to the question of the existence of knowledge on the part of the Internet provider. It says, if I understand it correctly, “merely provide.”

To use a specific example, if I were an Internet provider, as anyone can be, and the honourable senator were, forgive me, a pornographer — I know that she is not a pornographer because I know that she does not have even a pornograph — and we agreed that she would produce the pornography and I, as an Internet provider, would provide the means by which she can distribute her pornography, I have merely distributed her pornography, but I have done so knowingly. It seems to me that the question of the knowledge of the Internet provider of whether he or she is distributing child pornography ought to be the cogent part of section 163.1(6) rather than the word “mere.”

Am I reading correctly the intent of the amendment and have I understood correctly the wording of it?

Senator Milne: Honourable senators, I wish to thank Senator Banks for that question.

Hon. Pierre Claude Nolin: May I answer the question?

Senator Milne: I would be delighted to have Senator Nolin answer the question, as he moved the amendment in committee. However, I will attempt to present fairly the arguments in the committee. In fact, “knowingly” is included in other sections of the Criminal Code and I believe that Senator Banks’ interpretation of this amendment, standing alone with no context surrounding it, is probably correct. This was the subject of a great deal of discussion within the committee and was one of the reasons this amendment was not passed unanimously by the committee.

I will leave it at that. When we come to the third reading debate, others in this chamber may want to expand on that.

Senator Nolin: I wish to comment on the question raised by Senator Banks. The amended paragraph 3.1 of section 163.1 says that a custodian of a computer system who merely provides the means or facilities of telecommunication used by another person to commit an offence under subsection 163.1(3) does not commit an offence.

In his question to Senator Milne, Senator Banks asked about the intent. The intent was to ensure that the commercial business of Internet service provider only provides the conduit. The service provider is not subject to the infraction of transmitting. The way the new infraction is written, to transmit is an infraction without any reference to the criminal intent to transmit child pornography.

That was the problem encountered by the committee. We decided to ensure that the Internet service provider would not be caught in “the transmitting of” without knowledge of what they were transmitting.

Senator Banks: I thank Senator Nolin for that explanation. I believe I understand what he said and I agree that an unknowing Internet provider ought not be subject to charge. However, to look at the worst possible side of it, any of us could tomorrow invest some money and become an Internet provider. We can, thereafter, knowingly transmit the Encyclopedia Britannica, e-mail for other people and pornography.

It seems to me that the revision in the law ought to provide protection for Internet service providers. However, the aspect of “knowledge” ought to be included. We should be careful to permit the charging of Internet service providers who knowingly transmit child pornography, which, in the example I just gave, absurd as it was, could happen. I could in fact set up an Internet service specifically for the purpose of transmitting child pornography. Under the amendment before us, if I knowingly set up an Internet service specifically for the purpose of transmitting child pornography, I would not be subject to charge, and I think that is wrong.

The Hon. the Speaker: Honourable senators, I should clarify where we are procedurally. I have taken Senator Nolin’s comments as an intervention on the report, not as a comment on Senator Milne’s speech. Were it so, the allotted time would have expired and I would not have been correct in allowing Senator Banks to put a question to Senator Nolin. I have interpreted the

proceedings such that Senator Nolin was making an intervention, not making a comment on Senator Milne’s time.

Senator Nolin: The honourable senator may not have before him the exact wording of the new infraction, but an individual who puts in place a service for the purpose of distributing child pornography would be captured under section 163.1.

Senator Banks: Thank you.

Senator Nolin: I personally had to decide whether I should introduce an amendment to add the word “knowingly” to the amendment proposed to the Criminal Code by the government in section 163.1(3) or whether I should introduce an amendment to explain that in the normal course of their business that group of individuals is only there to provide a conduit. I decided on the latter.

The honourable senator and I can argue about which one should include the word “knowingly.” That is open for debate. The new crime created by section 163.1(3) is clear. If you have the intent to transmit child pornography, you are caught, regardless of where you are in the process. The amendment is to ensure that commercial organizations that exist merely as a conduit are not charged, because they are not doing so knowingly. The committee had a long discussion on that.

• (1510)

Hon. Anne C. Cools: Honourable senators, I wish to intervene briefly on the particular question now at the committee report stage. I appreciate and understand that Senator Nolin feels a degree of pride that his amendment has carried in committee.

In her speech presenting the report for our consideration, Senator Milne made mention of the fact that the committee was far from unanimous and that the vote was quite divided. I thought that I would register that fact as clearly as I can here. I would suspect that when we vote today on this report, the exact thing that happened at committee will happen here and there will be a clear division.

I wanted to crystallize the point that we did not all support Senator Nolin’s amendment, although I understand the sense of satisfaction he has that it carried.

Hon. John G. Bryden: I have a question for Honourable Senator Nolin.

I am relying on the honourable senator having given full disclosure on how we created the offence.

The Hon. the Speaker: Is the Honourable Senator Bryden asking a question of Senator Nolin?

Senator Bryden: Yes.

An Hon. Senator: Out of order.

Senator Cools: Senator Bryden can put a question to me but he cannot put a question to Senator Nolin, though he can speak to the report.

The Hon. the Speaker: Let us clarify whether the Honourable Senator Cools was making a comment or asking a question of Senator Nolin. Was Senator Cools making an intervention?

Senator Cools: I did not ask a question. I was speaking on the report. If I interrupted questions, I would have been happy to wait so that the questions to Senator Nolin could have been put. I was making an intervention on the report itself, which is where we are in the proceeding. I am sure it is not a big issue and that we could all agree easily to let Senator Bryden put a question to Senator Nolin.

The Hon. the Speaker: I thank the Honourable Senator Cools. As she regarded her interruption as an intervention, I take it that it is an intervention and, accordingly, leave will be required to give Senator Bryden an opportunity to ask Senator Nolin a question.

Honourable senators, is leave granted?

Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would agree to grant leave for one question.

Hon. Eymard G. Corbin: Honourable senators may have noticed that I rose earlier in order to put a question to the honourable senator who made the report. That honourable senator has now left. Since my question concerned an amendment presented by Senator Nolin, my intention is to rise again and put the question directly to him. I say that so Senator Robichaud will know that the debate going on right now is important.

Senator Robichaud: Honourable senators, I will allow two questions.

Senator Bryden: Honourable senators, I have a point of order. Since Senator Corbin rose first, does he ask the first question?

The Hon. the Speaker: I have recognized Senator Bryden, so he should go first. I have noted Senator Corbin's desire to rise after Senator Bryden puts his question.

Senator Bryden: Thank you, honourable senators.

Will Senator Nolin accept a question?

Senator Nolin: Even two!

Senator Bryden: The offence, as I understand it, is hinged, as are all offences in the Criminal Code, on the person having knowledge — *mens rea* — when he or she commits the offence.

If the issue is whether people do things knowingly or unknowingly, I suggest it would be appropriate that, instead of the amendment reading “who merely provides the means,” it read “a custodian of a computer system who unknowingly provides the means of facilitating telecommunications used by another person to commit ...” There would then be consistency in relation to the *mens rea*, the knowledge that is required by the

offence, and it is not an offence if someone does it unknowingly. There is one caveat on that. I do not know that “merely” is a well-understood or accepted term in law and in the statute interpretations, whereas “knowingly” and “unknowingly” are very well understood. Would you comment on that?

Senator Nolin: Honourable senators, first, let me tell you that I introduced the amendment in French and the French version of the amendment is much more precise — at least, in my understanding of it. What honourable senators have in front of them is a translation that was agreed upon by the committee. Basically, I introduced it in French.

I cannot agree to the first part of the question. I cannot agree that all the offences or crimes listed in the code need *mens rea*. I would like to say “yes” to that, but the way the code has developed over the centuries, there are some offences where *mens rea* is not needed. In some areas it is written that way; it is specifically written “knowingly” and so on. In other areas, it is not written that way.

Therefore, we have those three zones. I know some decisions interpret the code to mean that the criminal intent should be part of the construction of the crime.

My amendment was to ensure that we were not catching an honest commercial organization providing a service. That was the intent of my amendment.

Concerning the English translation, when I tabled the English version of the amendment in the committee, there were questions about it. I relied on the French version of my amendment and I can totally defend it. With regard to the English version of the amendment, I am willing to wait to ensure agreement in both official languages.

Does that answer the honourable senator's question?

[Translation]

Senator Corbin: Honourable senators, when Senator Milne presented the committee's report, she alluded to the amendment on material that has either artistic merit or an educational, scientific or medical purpose, in the context of child pornography.

My problem is the following: I am a serious amateur photographer. I often consult Web sites that show all kinds of photographs, including still life, architecture, nudes, et cetera. Whenever a Web site shows nudes, a warning is displayed, particularly on American sites. If you are 16 or under, you cannot go to these sites. I go nevertheless. As a legislator, I want to know what we are dealing with when we review this kind of legislation.

• (1520)

These sites offer up as art what is frankly outright and shocking pornography. I do not see how, by invoking artistic merit, you are going to avoid situations where what you are dealing with is just plain child pornography.

Have you defined artistic merit? Where are the standards, the safeguards? I am not so inclined to support your amendment.

Senator Nolin: Honourable senators, so as to be sure that everyone can follow our discussion, take the *Journals of the Senate* for February 19. Open them at page 1218 and you will understand what we are talking about.

Senator Corbin is referring to the second amendment. I referred to it in my speech at second reading. I alerted the chamber to an omission in the bill.

The Criminal Code already contains a defence. Subsection 163.1(6) reads as follows:

Where the accused is charged with an offence under subsection (2), (3) or (4), the court shall find the accused not guilty if the representation or written material that is alleged to constitute child pornography has artistic merit or an educational, scientific or medical purpose.

In *Sharpe*, the Supreme Court upheld the legality of this defence. My purpose is not to question the fairness of the Supreme Court decision. In *Sharpe*, it recognized the validity of this defence.

During my speech at second reading, I pointed out to the Chamber that we should include in subsections (6) and (7) of section 163.1 of the Criminal Code a new paragraph (4)1), describing the new offence created by Bill C-15A. I do not wish to question this line of defence. It exists. The Supreme Court has recognized it; it has upheld this defence. It is fair and reasonable that this defence be extended to the new offence created in Bill C-15A. Does this answer the honourable senator's question?

Senator Corbin: Honourable senators, I will take part in the debate at third reading.

Senator Nolin: Honourable senators, there will be an interesting debate on the whole issue of miscarriages of justice. A number of members of the committee have decided to abstain from voting on all articles of the bill dealing with such miscarriages in order to allow a debate to take place at third

reading. It is on this issue that we, as senators, must maintain a broad opinion on such a sensitive subject. We are talking about individual freedoms. This is what we must discuss at third reading.

[*English*]

The Hon. the Speaker: It was moved by the Honourable Senator Milne, seconded by the Honourable Senator Bryden that this report be adopted now.

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

Some Hon. Senators: Agreed.

Senator Robichaud: On division.

Senator Joyal: On division.

Motion agreed to and report adopted, on division.

The Hon. the Speaker: When shall this bill, as amended, be read the third time?

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

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, today is Wednesday, a day on which committees sit at 3:30 p.m. With leave of the Senate, I move that the Senate do now adjourn and that all items on the Order Paper that have not been reached stand in their place.

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

Hon. Senators: Agreed.

The Senate adjourned until Thursday, February 21, 2002, at 1:30 p.m.

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