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OFFICIAL REPORT
(HANSARD)

Tuesday, October 7, 2003

THE HONOURABLE LUCIE PÉPIN
SPEAKER *PRO TEMPORE*

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

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THE SENATE

Tuesday, October 7, 2003

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

Prayers.

SENATORS' STATEMENTS

THE LATE ISRAEL H. ASPER, O.C.

TRIBUTES

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it was with great sadness that I learned just minutes ago of the death of Israel Asper, better known to all of his friends as Izzy. I first met Izzy when a Mercedes drove into my yard in the fall of 1977. Out popped what I recognized as the former Leader of the Liberal Party of Manitoba, whom I had known by reputation but not in person. My husband and I had just moved to Winnipeg, and Mr. Asper was curious about the Liberal sign outside of our house. A provincial election had just been called and this house did not usually have a Liberal sign in front of it. So began our friendship with him and Babs, his wife of many years, and his children Gail, David and Leonard.

Izzy was a lawyer by profession, a jazz enthusiast by choice and a businessman of the highest order. He was also a great and devoted Canadian and Manitoban, who chose consistently to make his home in our province despite the allure of living elsewhere. Indeed, Babs and Izzy just moved into their new condominium last Friday. During a chat with him that evening at the Prime Minister's dinner, he informed me that he had just shipped boxes of political memorabilia, including 3,000 Izzy buttons, to his new condo.

Izzy was a business success. I am certain all honourable senators know of his ownership of CanWest Global Communications Corporation and the *National Post*. He believed money was useful to support others less fortunate and to support the enrichment of his community. His contributions to the city of Winnipeg are legendary: the business school at the University of Manitoba; the Asper Centre for the educational, sporting and cultural life of the Jewish community, which was named for his parents; and the human rights museum that is still a dream but one that is on its way to becoming a reality. He also supported the theatre and ballet and, above all, his beloved jazz. One of his most recent projects was an all-jazz radio station in Winnipeg.

Mr. Asper never forgot his rural roots. He was born and raised in Minnedosa, a farming community west of Winnipeg.

Honourable senators, to Babs, her children and her grandchildren, I offer my deepest sympathy. Izzy Asper was a good man. He will be missed where he touched so many with his generosity and his love of life. He lived life to the fullest and will be known forevermore as a man who gave his all.

[*Later*]

Hon. Terry Stratton: Honourable senators, I was late coming to the chamber and I had not heard about the passing of Mr. Izzy Asper. Therefore, I should like to speak further to this tomorrow, because even on our side, in Manitoba, he was considered a very remarkable man.

GOVERNOR GENERAL

STATE VISIT TO RUSSIA

Hon. Landon Pearson: Honourable senators, I rise today to add my voice to that of Senator Spivak's, who spoke last Thursday to the Governor General's state visit to Russia. I would like to express my unreserved admiration for the Right Honourable Adrienne Clarkson and my appreciation for having been included in the remarkable delegation she had with her.

Having lived in Moscow in the early 1980s, I know only too well the challenges of representing Canada to a country whose natural tendency is to focus on Europe or on the United States. I am aware of Russia's abiding respect for the panoply of power. This means that a state visit has unusual significance for both the leaders and the people, especially when a person such as our Governor General conducts this kind of visit with her charismatic presence and her singular ability to respond to any situation with intelligence and grace.

The media coverage in Russia was wide, varied and generally positive. The image of Canada has now been more firmly planted in the minds of the Russian public than at any time since Paul Henderson scored his winning goal in 1972. That image encompasses much more than hockey, beginning with Mr. John Ralston Saul, who is already respected in Russia as a thinker and a writer. Russians are more aware of the richness of our culture; of the value we place on federalism and on the preservation of official languages; of the excellence of our scientists; and, notably, of the stature and sophistication of our northern peoples.

Honourable senators, aside from raising the profile of Canada in Russia, the central purpose of the state visit was to discuss the modern North. Canada and Russia are neighbours across the Arctic and, together, contain 80 per cent of the lands, peoples and resources above the Arctic Circle. We have considerable mutual interests. The months of preparation for this visit, the visit itself and the extensive work that will follow will repay a hundredfold any public investment in that trip. Doors have been opened that would otherwise have remained closed and connections have been established that will greatly enhance our capacity to work together on issues of profound importance to us all: sustainable development in the North, the protection of the Arctic environment and the empowerment of indigenous peoples of the circumpolar region.

STATE VISIT TO RUSSIA—
RESPONSIBILITY OF MINISTERS OF THE CROWN

Hon. Lowell Murray: Honourable senators, I too would like to speak about the Governor General of Canada and her constitutional position vis-à-vis the government.

I had no opinion when Madam Clarkson was appointed to that office because I did not know much about her except what I had been able to observe through her media appearances over the years. However, one has only to see her in the company of children, veterans, people in Northern Canada, Aboriginals and others to realize that she is ideally suited to the post of Governor General. She has done a splendid job. More than that, her speeches, and in particular, I think of the one delivered by her at the dedication of the Tomb of the Unknown Soldier, are the most literate, eloquent and sometimes moving and evocative that anyone has given in this country since former Governor General Vincent Massey, and perhaps before that time.

On the constitutional point, Governors General do not act except on the advice of ministers. Our Governor General is in Russia and other countries on the advice of her ministers. I am appalled by the failure of ministers of the Crown to step forward and take responsibility for what the Governor General is doing on behalf of Canada. It is the job of ministers — someone — either the Prime Minister, the President of the Privy Council or, in the case of this trip, the Minister of Foreign Affairs to step forward.

• (1410)

Honourable senators, as an example of the way matters should be handled, there was a case a mere few months ago in Nova Scotia concerning criticism in the media and some political circles of certain expenses that had been undertaken at Government House in Halifax. I believe they related to the decorating or redecorating of the place. The appropriate minister of the Crown in the provincial government of Nova Scotia stepped forward immediately, gave an explanation, took responsibility and that was it.

There is no reason in the world that officers from Rideau Hall should not appear before a parliamentary committee and answer questions concerning the budget of that place, as they appear to be doing. As for the Governor General herself, she is above politics, but the ministers are not. It is their job to step forward and take responsibility for her actions. In my observation, they have utterly failed their duty in that respect.

PRINCE EDWARD ISLAND

VOTER TURNOUT IN RECENT PROVINCIAL ELECTION

Hon. Elizabeth Hubley: Honourable senators, just two weeks ago, on September 29, the people of Prince Edward Island voted in a provincial general election. There were two notable outcomes: The Progressive Conservative Party, under the leadership of Pat Binns, was re-elected to a third consecutive term; and the new Leader of the Liberal Party, Robert Ghiz, was elected, together with a strengthened opposition.

However, there was something else that distinguished the recent Prince Edward Island election. Islanders were obliged to cast their ballots on the morning after one of the most violent hurricanes to strike the province in over 40 years. In fact, when the polls officially opened on that Monday morning, the wind and rain was still buffeting parts of the province. The streets and roadways were littered with fallen hydro lines and trees. Many polling stations were without electricity throughout the day and some voters had to exercise their franchise by candlelight or in the glow of a kerosene lamp, as their forefathers did a century ago.

The RCMP and other authorities had cautioned people to stay off the roads, except in an emergency, but Islanders were not deterred. In spite of Hurricane Juan, and under the most severe circumstances imaginable, Islanders voted, and once again in record numbers.

The voter turnout on September 29 in Prince Edward Island was a remarkable 83 per cent. Central Canadian newspapers have been suitably impressed. "P.E.I. shows us how," trumpeted *The Globe and Mail*. "What is it that the good folks of Prince Edward Island have that we don't?" asked the *Ottawa Sun*.

Honourable senators, Islanders have demonstrated a high level of civic responsibility throughout their history, but it must also be pointed out that all Canadians have such a reputation. The International Institute for Democracy and Electoral Assistance in Stockholm, Sweden, ranks Canada seventy-seventh out of 172 countries in voter turnout, with an average of 68.4 per cent in federal elections. The United States, by comparison, is ranked one-hundred thirty-ninth, with an average turnout of only 48.3 per cent.

Why are Prince Edward Islanders so motivated to exercise their democratic franchise? To begin with, my province is like one big neighbourhood; Islanders have a strong sense of community. Moreover, politics is the lifeblood of the province. We live and breathe it. We also can look to our early colonial history for an explanation. Islanders were tenants on their own land for nearly a century, enslaved to a band of absentee landlords and their agents. It was the tenant farmers who gave impetus to political change in Prince Edward Island. In 1851, when Prince Edward Island became the second British North American colony to be granted responsible government, after Nova Scotia, Islanders treasured their new-found democratic voice. From that early time, Prince Edward Islanders have been keen to participate in the electoral process. The vote of September 29, in the middle of a hurricane, was only the latest manifestation of that democratic zeal.

In conclusion, honourable senators, I would like to congratulate the candidates from all political parties who contested in the 2003 Prince Edward Island general election, as well as the Chief Electoral Officer, Mr. Merrill Wigginton, and the staff of Elections P.E.I. for their perseverance and commitment to public service. Most of all, I want to congratulate Islanders for once again putting democracy into action.

[*Translation*]

ROUTINE PROCEEDINGS

COMMISSIONER OF OFFICIAL LANGUAGES

2002-03 ANNUAL REPORT TABLED

The Hon. the Speaker *pro tempore***:** Honourable senators, I have the honour of tabling the 2002-03 annual report of the Office of the Commissioner of Official Languages, pursuant to section 66 of the Official Languages Act.

SUPREME COURT JUSTICE MORRIS J. FISH

COPY OF COMMISSION TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a copy of the commission, dated August 5, 2003, constituting the Honourable Morris Fish, Puisne Judge of the Supreme Court of Canada, Deputy of the Governor General, to do in Her Excellency's name all acts on her part necessary to be done during Her Excellency's pleasure.

I would ask that the commission be printed in the *Journals of the Senate* of this day.

(*For text of commission, see today's* Journals of the Senate, *p. 1123*.)

COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

2002-03 ANNUAL REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, a copy of the 2003 report by the Commissioner of the Environment and Sustainable Development to the House of Commons.

[*English*]

SPECIFIC CLAIMS RESOLUTION BILL

REPORT OF COMMITTEE

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

Tuesday, October 7, 2003

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

FIFTH REPORT

Your Committee, to which was again referred Bill C-6, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, in obedience to its Order of Reference dated Thursday, September 25, 2003, has examined the said Bill and now reports the same without further amendment.

Your Committee also made certain observations, which are appended to this report.

Respectfully submitted,

THELMA J. CHALIFOUX*Chair*

(*For text of observations, see today's* Journals of the Senate, *p. 1125*.)

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

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

[*Translation*]

HUMAN RIGHTS

BUDGET ON STUDY OF LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP—REPORT OF COMMITTEE PRESENTED

Hon. Shirley Maheu, Chair of the Standing Senate Committee on Human Rights, presented the following report:

Tuesday, October 7, 2003

The Standing Senate Committee on Human Rights has the honour to present its

SIXTH REPORT

Your Committee, was authorized by the Senate on Wednesday, June 4, 2003, to examine and report upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or common law relationship and the policy context in which they are situated. In particular, the Committee was authorized to examine:

The interplay between provincial and federal laws in addressing the division of matrimonial property (both personal and real) on-reserve and, in particular, enforcement of court decisions;

The practice of land allotment on-reserve, in particular with respect to custom land allotment;

In a case of marriage or common-law relationships, the status of spouses and how real property is divided on the breakdown of the relationship; and,

Possible solutions that would balance individual and community interests.

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,

SHIRLEY MAHEU*Chair*

(*For text of budget, see today's* Journals of the Senate*, Appendix, p. 1136*.)

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

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

• (1420)

AMENDMENTS AND CORRECTIONS BILL, 2003

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-41, to amend certain acts.

Bill read the first time.

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

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

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(*h*), I have the honour to present to the Senate a petition signed by 2,000 persons, asking that Ottawa be declared a bilingual city in order to reflect the linguistic duality of the country.

The petitioners wish to draw the attention of Parliament to the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the Constitution Act, 1867 designates the City of Ottawa as the seat of government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice; and

That the capital of Canada has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, the petitioners request that Parliament confirm, in the Constitution of Canada, that the city of Ottawa, capital of Canada, be declared officially bilingual, under section 16 of the Constitution Act, 1867 and 1982.

[*English*]

QUESTION PERIOD

NATIONAL DEFENCE

AFGHANISTAN—DEATH OF TWO SOLDIERS— SUITABILITY OF UNARMOURED VEHICLES— RESIGNATION OF MINISTER

Hon. J. Michael Forrestall: Honourable senators, may I first join in expressing, through the Leader of the Government in the Senate, sympathy to the family of Mr. Izzy Asper and to the people of Manitoba for the death of such an outstanding Canadian.

I have a series of questions for the Leader of the Government. She will be familiar with the subject matter because I asked earlier about the replacement program for the Iltis Jeeps, which made up most of the rolling capability of the reserve forces in Prince Edward Island.

Can the Leader of the Government in the Senate confirm the following facts with regard to the most unfortunate deaths of two Canadian solders in Afghanistan? Can she confirm that Canada was advised by our American allies not to take unarmoured vehicles to Afghanistan for safety purposes, and that our Iltis vehicles are unarmoured, at the end of their service life and due for replacement?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I cannot confirm or deny the information. My honourable friend refers to a statement in the newspaper that may or may not be true.

What I do know is what Major-General Leslie said, which I think is very important. He said, "You can't win the hearts and minds of the Afghan people as you speed by in an armoured vehicle." This can-do attitude of reaching out to the hearts and minds and helping people is deeply ingrained in the spirit of the Canadian Forces.

Senator Forrestall: Can the minister also confirm that the Iltis has been plagued by breakdowns in theatre and, in a CanWest news story dated August 21, was described by a soldier in theatre as "a bit of an albatross around our necks"?

Can she also confirm that when any of our allies left the compounds — for example, our Turkish friends — they only travelled in armoured columns because of mine and rocket-propelled grenade threats?

Senator Carstairs: What I can tell the honourable senator this afternoon is that the light utility vehicle known as the Iltis is currently operating at an 89 per cent reliability rate in Kabul, which is considered by the military to be quite acceptable given the harsh environment. I can also tell the honourable senator that the troops sometimes travel on foot, in armed vehicles or in this Jeep, and that decision is made by the commanding officers.

Senator Forrestall: On or about July 19 of this year, the Minister of National Defence stated that he would resign if any Canadian died as a result of a lack of preparation or equipment. Has the Prime Minister asked for the resignation of the Minister of National Defence, and if not, why not? In the absence of that request, has the Minister of National Defence offered the resignation that he promised?

Senator Carstairs: Honourable senators, no, the Honourable Minister of Defence has not offered his resignation because he stands by his statement that the preparation and the equipment of our troops in Kabul are appropriate.

• (1430)

Honourable senators, it is important that this Senate understand that an investigation of this tragedy is now underway. However, the preliminary investigation would indicate that this was a 20-pound Russian land mine that would have blown up anything. It is also appropriate to tell this chamber that it appears to have been of extremely recent origin, since vehicles were travelling on that same path within a two-hour period of this terrible and tragic accident. The service of our military in this case has been exemplary. The Minister of Defence and, I think, all Canadians, are very proud of the work we are doing in Kabul.

Senator Forrestall: We are all proud of the work our troops are doing, but many of us are very concerned about their safety and well-being. The use of land mines is something we deplore; about that there is no question.

The question is not, as reflected by the Leader of the Government, about the suitability of the equipment; the question is whether the equipment provided to our Canadian Forces as we send them overseas is adequate to do the job in a safe manner. There is a place for rubber vehicles and a place for tracked vehicles. This is not the first time that a well-worn or well-used highway, after having been traversed on a number of occasions by a number of different vehicles, has been the site of the death of Canadians. The minister does not have to go too far back in memory to recall that. We know it has happened.

My question is this: When will our troops in Afghanistan be provided with equipment that will ensure their safety as they travel around the countryside?

Senator Carstairs: Honourable senators, it is the view of the military that they now have safe, adequate and appropriate equipment.

Senator Forrestall: Is that what they call an albatross around their necks?

TREASURY BOARD

OFFICE OF COMPTROLLER GENERAL— DEPARTMENTAL COMPTROLLERS

Hon. David Tkachuk: Honourable senators, the *Ottawa Citizen* of October 1, 2003, reported that, to prevent abuses of public money similar to those alleged in the Radwanski affair, Paul Martin promised to hire a financial comptroller for every department and agency who would report to a comptroller general responsible for the overall government.

Departmental comptrollers would no longer be under the direct authority of the departments in which they work. Could the government advise the Senate as to whether there is a valid policy reason for this not already being the case, or is it a matter of nobody thinking that this would be necessary?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, since this is a proposal being put forward by Paul Martin, who is not yet the Prime Minister of Canada, I would suggest that a question would be more appropriately placed when the new Prime Minister is chosen and takes office.

Senator Tkachuk: Honourable senators, in the same article Mr. Martin said, "I suggested some time ago" — obviously, when he was a member of the government — "that there ought to be within every government department, agency — a comptroller reporting to a comptroller general."

Could the Leader of the Government advise the Senate why the government did not follow up on Mr. Martin's suggestion at the time it was made? Did the resistance come from the Prime Minister, who seems to think that the system is working because Mr. Radwanski was caught? Did it come from Treasury Board, which did not want the aggravation of implementing the idea, or did Mr. Martin simply not feel strong enough to pursue the idea aggressively?

Senator Carstairs: Honourable senators, I am the Leader of the Government in the Senate. The Prime Minister of Canada is the Right Honourable Jean Chrétien. I will answer questions with respect to the policies of this government. I will not answer questions about the hypothetical policies of who may be the next Prime Minister.

Senator Comeau: Go to the caucus tonight!

IMMIGRATION AND CITIZENSHIP

NATIONAL BIOMETRIC IDENTIFICATION CARD—NATIONAL FORUM—PARTICIPATION OF PRIVACY COMMISSIONER OF ONTARIO

Hon. Consiglio Di Nino: Honourable senators, Ms. Ann Cavoukian, the Ontario Privacy Commissioner, says that she has been denied an invitation to speak to a forum on biometrics taking place in Ottawa this week and that repeated attempts to contact the Minister of Citizenship and Immigration on the matter have gone unanswered.

Ms. Cavoukian is considered to be the leading expert on the use of iris scans as security identifiers and is credited with being the driving force behind Ontario legislation that protects against the abuse of biometrics.

Minister Coderre has repeatedly said that he would like to have a national debate on the issue of national identification cards. If that is the case, could the Leader of the Government in the Senate tell us why the minister has not seen fit to invite the Ontario Privacy Commissioner to the forum?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would assume it is because this national forum will have guest speakers from across the nation, all of whom are experts. I do not deny that Ms. Cavoukian probably has expertise in this area, but it would be rare to invite a provincial privacy commissioner to a national meeting.

Senator Di Nino: That is an interesting response.

Honourable senators, an accusation made by a member of the other place is that the conference is rigged. I am reading from this morning's *The Globe and Mail*, which states that Mr. Alan Dershowitz, a lawyer and a professor from Harvard University, will be speaking at this conference. He is to be paid $36,000 to speak, plus expenses. Here we have a local expert, none other than the Privacy Commissioner for the Province of Ontario, who is offering to share her expertise and her concerns with the folks at this forum. Honourable senators, she is concerned about the privacy and security issues at the early stages of the development of this technology.

Therefore I ask the minister: Is it because she is opposed to this kind of technology that the minister has refused her request to speak at this conference?

Senator Carstairs: Honourable senators, no.

Senator Di Nino: Honourable senators, in its formation, the Senate was created to represent the interests of minorities and the regions. I am here as an Ontario senator. In any discussion of national issues, if there are qualified interested parties in this country, in particular those who hold a public office which is concerned with issues of that specific nature, I would ask the minister to ensure that these people are invited to express their views. Further, I would ask the minister to ask her colleagues in cabinet to invite folks from all parts of our country so that they may share their experience and expertise with others. Would she assure us that she will do this, please?

Senator Carstairs: I would be pleased to take the honourable senator's suggestion to cabinet.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I presume that the Leader of the Government in the Senate does not believe confidentiality to be a purely federal or provincial responsibility.

She will remember, when she was chair of the Standing Senate Committee on Legal and Constitutional Affairs, that at times we invited provincial ministers to appear during consideration of a bill. Unfortunately, they refused our invitations.

A provincial representative intends to take part in a debate that the minister believes should be national. I hope that the leader will pass this message on to cabinet so that the ministers are open to hearing from their provincial colleagues. I hope that she agrees with our colleague's proposal.

[*English*]

Senator Carstairs: Honourable senators, I believe that the individual in question has already put her ideas forward in a public arena. However, as the honourable senator well knows through the operations of the Standing Senate Committee on Legal and Constitutional Affairs, we would not invite a representative of one province or territory without inviting representatives of all of the provinces and territories. It would seem to be only appropriate that her testimony be heard within that dimension.

SOUTH KOREA—TELEVISION SHOPPING CHANNEL—SALE OF IMMIGRATION PACKAGES

Hon. Terry Stratton: Honourable senators, on August 28, the Hyundai Home Shopping Network in Korea ran a program entitled, Farewell to Korea, which sold three different types of immigration packages to Manitoba. In 90 minutes, almost 1,000 people pledged to buy these packages priced at up to $33,000 each. The sale was repeated on September 4 and it attracted pledges from almost 3,000 Koreans.

• (1440)

These television programs combined brought in sales of approximately $82.5 million Canadian. These packages were sold through an immigration consulting firm. In truth, this firm was actually selling immigration counselling, but it was conducted under the guise of virtually guaranteed immigration for the buyers.

The program also misrepresented Manitoba's immigration process as it told viewers that the province does not require interviews or English proficiency, when that is not the case.

Is the federal government aware of this sale of immigration packages? If so, is it concerned about the potential for fraud and the message that this activity sends to both terrorists and our allies about how easy it is to enter Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I was not aware of the immigration packages. I do not know whether the minister was aware, but I will seek to find out.

The most important thing in what the honourable senator has indicated today is the announcement recently that all of these immigration counsellors must be licensed, because if we do not move in that direction, the honourable senator's tale of what might happen may actually occur.

Senator Stratton: Honourable senators, Manitoba Labour Minister Steve Ashton has asked the federal government to move quickly to regulate immigration consultants. Federal Citizenship and Immigration Minister Denis Coderre has said that he is looking into the matter, as the Leader of the Government in the Senate has said. Does she know how quickly this will happen?

Senator Carstairs: Honourable senators, no, I do not. I know the department staff is working on the matter, but the time line is still not identified.

Senator Stratton: Honourable senators, the immigration consulting firm involved in the incident in Korea is a Korean company with a branch office in Winnipeg. However, the Winnipeg office does not have a telephone listing, and the Manitoba address given on the company's Web site is actually an empty apartment.

The Korean community in Manitoba has indicated that it would like to see an investigation of this company. Could the Leader of the Government in the Senate tell us who would conduct such an investigation?

Senator Carstairs: Honourable senators, I do not know. I think it might be a mixed investigation. If we are talking about an application to incorporate in the province of Manitoba, an investigation would be done by the Manitoba government. If we are talking about the broader issue of the regulation of immigration consultants, that obviously would be a federal issue.

What is important here is that someone is not acting in the best interests of the province of Manitoba or, indeed, of the country, and I will take those serious concerns to the Minister of Immigration.

HUMAN RESOURCES DEVELOPMENT

EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

Hon. Edward M. Lawson: Honourable senators, I received an e-mail today — as did other senators, I am sure — from an Air Canada flight attendant. She writes:

> I have been an Air Canada flight attendant for the last 10 years. I have been paying my employment insurance contribution each month, with the anticipated comfort of knowing that if I were to lose my job, I would be eligible for employment insurance payments until I secure alternate employment.
>
> Earlier this year, some regulatory changes occurred and the HRDC suddenly decided that flight attendants were **no longer eligible** to collect Employment Insurance payments, even though we have all been contributing for years and **continue** to make our contributions.

My question has several facets. First, who gave HRDC the right to strip these employees of their legal entitlement to employment insurance benefits?

I would like a written answer to my second question because I want to make it public. What other groups of workers has HRDC stripped of their legal entitlement to employment insurance rights? Surely this development cannot be due to a lack of funding and it cannot be a cutback. We all know that more than the maximum required has been paid by the employers and employees and has been used by the government for other purposes. This is an outrageous event, and I would like to have an answer as to why it has happened, who made it happen, and who is responsible for correcting it immediately.

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Lawson for his question. There have been no regulatory changes, as far as I know. I will elicit an answer from the department this afternoon to find out whether such changes have been made and whether other individuals are affected, because this is the first time I have heard of such a thing.

FOREIGN AFFAIRS

UNITED STATES— CANADIAN CITIZEN DEPORTED TO SYRIA

Hon. Marcel Prud'homme: Honourable senators, Mr. Maher Arar is back in Canada.

Hon. Senators: Hear, hear!

Senator Prud'homme: We all rejoice with his wife. In the days to come, we will learn a lot more about what took place behind the curtain and how many people intervened privately. I thought that someone in the Senate of Canada would jump on this news. After all, the Senate is the protector of minorities and the protector of Canadians. In a way, I am glad that today I was recognized last by Her Honour, even though I was impatient to ask the question.

Mr. Arar, travelling on a Canadian passport, was arrested in New York. He was transferred to a country that I have known for 40 years, Jordan, where he was put in a car and transferred to Syria. Having been in that region quite some time, I know it does not take 12 days to make a transfer by car to Syria, but he was 12 days in Jordan, doing what we do not know. He spent close to a year in a jail in Syria, a jail that reminds me a little bit of some jails in Turkey in the old days.

An inquiry into this matter has been turned down again.

Would the Chairman of the Standing Senate Committee on Foreign Affairs at long last show his leadership and look into this question, as is being done in the House of Commons? I think that the most prestigious Senate committee, on which I am forbidden to sit, is the Foreign Affairs Committee.

Honourable senators, what exactly is going on? All Canadians want to know. As tough as the answers may be, Canadians will not stop asking questions, and rumours will start flying everywhere until we have a real inquiry, as was turned down by the Solicitor General.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I think all of us in this chamber welcome the return of Mr. Arar to Canada, where he has been a citizen for some years.

The government, through the Minister of Foreign Affairs, protested strongly to the United States that if Mr. Arar was to be deported, he should have been deported to Canada, not to Syria. That has already happened.

We do not know the conditions under which Mr. Arar was held because he has chosen not to speak yet, which I think in his circumstances, given the exhaustion he was clearly suffering, is wise. I can assure the honourable senator that when Mr. Arar speaks and whatever actions he chooses to take against the United States and/or Syria will be supported by the Government of Canada.

[*Translation*]

Hon. Pierre-Claude Nolin: Honourable senators, can the Leader of the Government in the Senate tell us what information the Canadian authorities gave the Americans about Mr. Arar?

[*English*]

Senator Carstairs: No, honourable senators, I have no idea what if anything was given to the Americans by the RCMP. This is an internal operational matter with the RCMP.

[*Translation*]

Senator Nolin: If the Leader of the Government in the Senate listened to the same news reports as I did, she would know that the Americans are being quite specific in stating that the police and security forces in Canada — I should say those individuals responsible for security in Canada — informed them of the potential danger posed by Mr. Arar. Is the Leader of the Government aware of this information?

[*English*]

Senator Carstairs: Like the honourable senator, I have read newspaper accounts of what has happened here. However, I will not comment further on RCMP operational matters.

• (1450)

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I wish to draw your attention to the presence in our gallery of two visitors from the Six Nations, Melba Thomas and Ervin Harris. On behalf of all senators, I welcome you to the Senate of Canada.

Ms. Moore and Mr. Harris are the guests of the Honourable Senator Gill.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—
DEBATE CONTINUED

On the Order:

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

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Hon. Gérald-A. Beaudoin: Bill C-10B has come back, honourable senators. This bill has been with us for one and a half years. The other House has accepted two amendments, but disagrees with us on three amendments.

Great interest has been shown in the important objectives of this bill. This bill is unique because we have created, with the other House, a parliamentary precedent, by splitting a bill. That precedent may be useful in the future; only time will tell. I will not dwell on that precise point.

On September 29, 2003, we received a message from the House of Commons with respect to Bill C-10B saying that the House of Commons continued to disagree with the insistence of the Senate on amendment numbered 2 and that it disagreed with Senate amendments numbered 3 and 4.

The House of Commons notes that there is agreement in both Houses on the need for legislation to address cruelty to animals and to continue to recognize reasonable and generally accepted practices involving animals. The other House, however, is convinced that Bill C-10B should be passed in the form it approved it on June 6, 2003.

On October 1, 2003, the Honourable Leader of the Government in the Senate moved:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4...

It is on those three items that I wish to express my views.

First, the amendment numbered 2 replaces the words "kills with lawful excuse" with the following words "causes unnecessary death."

[*Translation*]

In English: "kills an animal without lawful excuse" by "causes unnecessary death."

The House of Commons disagrees, because the word "unnecessary" would lead to confusion.

[*English*]

The Senate should continue to insist on its amendment number 2. It is a pure question of the interpretation of law. We discussed that point in the Standing Senate Committee on Legal and Constitutional Affairs and we quoted, in particular, the *Menard* case.

In appeal, Mr. Justice Lamer relied on the criterion of necessity.

[*Translation*]

Once again, it must be stressed that the means chosen to kill an animal do not cause avoidable pain.

[*English*]

Menard is a very important case in our jurisprudence.

Second, I am of the opinion that the Senate should insist on its modified version of the amendment numbered 3. The modified version creates a defence for traditional Aboriginal practices. More than one witness came before us. The Aboriginal people were heard. It is as a result of that testimony that we arrived at the modified version. Again, this is a question of law and interpretation. We may agree or disagree, but we think that we are right.

Third, the amended version of the amendment numbered 4 relates to the defences in subsection 429(2) of the Criminal Code of Canada, the defences of legal justification. Legal excuse and colour of right is what this is about. The defence of colour of right comes from the common law. We discussed, in French and in English, the common law and the civil law. In French, in the civil law domain, it is referred to as "apparence de droit."

[*Translation*]

French civil law includes the colour of right. In other words, someone can act in the belief that they have the legitimate right to do so.

[*English*]

Colour of right is a defence. It may seem mysterious, but it is not. It is a defence.

The other House has rejected our amendments, but the explanation that they give, I regret, does not convince me entirely of their position. We should continue to insist on our version. I suggest that we continue to stand by our amendments.

In conclusion, I suggest that the matter be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. George J. Furey: Honourable senators, we have been engaged in a review of this rather troublesome legislation dealing with animal cruelty since last fall. New animal cruelty legislation has a long history in the House of Commons, dating back to before the 2000 election. The original animal cruelty bill died on the Order Paper at prorogation for the 2000 election. Since that time, the new bill moved through the House of Commons and to the Senate in October 2002.

• (1500)

Senators will recall that it came to this chamber as Bill C-10. The Standing Senate Committee on Legal and Constitutional Affairs, on the instructions of this chamber, split the bill into two parts: Bill C-10A, the firearms bill, and Bill C-10B, the animal cruelty bill. Your committee began its study of Bill C-10B in December 2002. In May 2003, your committee respectfully recommended four amendments to this chamber for adoption. This chamber accepted the reasoning behind those committee recommendations and adopted the amendments. A message was sent back to the House of Commons informing the House of those changes and respectfully seeking their agreement.

The House of Commons considered the message and accepted two small changes to the bill that somewhat met the concerns of this chamber on two of the four relevant matters. In June, a message back to this house stated that the other place did not agree with two of the four recommended amendments. The message was sent to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration and more evidence was heard. The Senate sent the matter back to the other place on June 19, 2003, again requesting the original amendments. We received a message back from the other place dated September 29, 2003.

Honourable senators, I do not believe that the most recent message properly addresses the concerns raised by this chamber. This is most troubling, because the concerns of this chamber were clear and cogent.

I would like to take a few moments to carefully explain to honourable senators how that message from the other place fails to turn its attention to the concerns raised by this chamber.

In part 1 of the message dated September 29, 2003, honourable senators can see that the other place is addressing itself to the killing provision, which I have spoken about on a number of occasions in this chamber. Senators will recall that this chamber decided to remove this offending provision and replace it with words that would have met the alleged desires of the Department of Justice. Honourable senators will recall that the alleged desire of the Department of Justice was to have a provision that dealt with death of an animal, because officials at the Department of Justice thought that the word "injury" did not encompass death. I am at a loss to try to explain their reasoning here, as any rational person would think that the death of an animal would be included in any injury causing such death. However, in the interests of cooperation, we were prepared to appease their concern. Notice now what the other place says in responce to our amendment. They state:

> This House is of the view that the defence of "without lawful excuse" has been interpreted by the case law as a flexible broad defence that is commonly employed in the Criminal Code of Canada.

Honourable senators, our response to that statement has been consistent, clear and cogent. First, we have stated that, the fact that the phrase "without lawful excuse" is extensively employed in the Criminal Code, does not imply or in any way suggest that the activities that we have before now thought to be legitimate, that is, hunting, culling, and euthanizing animals, will remain legal after this bill.

Second, the placement of the words "without lawful excuse" in the Criminal Code is most often done in cases where the conduct in question is conduct that we aim to prohibit, not conduct that we aim to permit. For example, the possession of obscene material is prohibited as a general theory to which lawful excuse applies as an exception. Failing to blow into a breathalyzer is prohibited conduct, as a general case, with the exception being where there is a lawful excuse. Being in someone else's house without their permission is generally prohibited, except in cases where there is lawful excuse.

Third, in this case the phrase, "without lawful excuse" is preceded by the phrase, "kill an animal." The preceding phrase, "kill an animal," states to the world at large that this is conduct generally prohibited. In some cases, where one has a lawful excuse, the prohibited act will be excused.

The other place then states:

> It has been the subject of interpretation by courts for many years, and is now well understood and fairly and consistently applied by courts...

That is in reference to the phrase, "without lawful excuse." It is true, honourable senators, that courts have long interpreted this phrase, but the other place continues to repeat this without actually focusing on how the Supreme Court of Canada defined the phrase "without lawful excuse." At the risk of boring senators with a little too much case law, I will take a moment to go over Justice Dickson's definition of this phrase from the Supreme Court of Canada, which is as follows:

> "Lawful excuse" is a very general term. It normally includes all of the defences which the common law considers sufficient reason to excuse a person from criminal liability. It can also include excuses specific to particular offences. The word "excuse" is used in this broad meaning in s. 7(3) of the *Criminal Code*, which provides that all common law justifications and excuses continue to be available under the *Code*. This provision has been interpreted to mean that the common law defences are not frozen in time. They can be developed and tailored to fit changes in the law and new offences.
>
> If Parliament does not give some indication that it has assigned a particular meaning to "excuse", the word will be taken to have the same meaning as "excuse" under the common law and in s. 7(3).

That citation can be found in *R v. Holmes* (1988), 41CCC(3d), 50 DLR (4th) 680 (SCC).

Honourable senators, we must carefully look at the words of Justice Dickson. He said that Parliament should give some indication that the phrase has a particular meaning. I ask honourable senators: Has the other place given any indication, expressed or implied, that all our traditional animal hunting activities are lawfully excused? I think not. By the choice of general words of prohibition and no special words of excuse, the other place has led us to Justice Dickson's next sentence. Justice Dickson next says that the phrase will be understood to have its ordinary meaning of common law defences, if there is no legislative indication otherwise.

The message is excessive in its deference to the phrase, "without lawful excuse," but Justice Dickson says it only means that an accident, duress or mistaken fact are implied by that phrase. This is not sufficient to protect or to imply exemption for all the animal activities in which we engage. It is precisely what would be the case if we wanted to prohibit killing animals the way we prohibit killing domestic pets and cattle.

In the third and fourth sentences of Justice Dickson's passage he reiterates to anyone who has not understood that the phrase is of little significance beyond ordinary common law excuses unless Parliament specifically indicates that it has such particular meaning.

If honourable senators can find any indication to tell a judge that this phrase carries particular defences related to our everyday killing of animals, I will gladly accept that this phrase is sufficient protection for such activities. Nowhere, honourable senators, in my humble opinion, will you find such implicit reference to guide a judge.

The Department of Justice attempted to mount the argument before our committee that our traditional animal killing activities are common law rights that will be recognized by the phrase, "without lawful excuse." Your committee was quite puzzled by this idea, since codification in the Criminal Code of a specific prohibition of a certain activity, such as killing an animal, by definition extinguishes any common law rights to kill animals. If codification in statute did not extinguish former common law rights, how would we prohibit any activity that hitherto was legal, such as the possession of certain types of pornography or hate literature? The words of section 8(3) of the Criminal Code support your committee's views on this. Section 8(3) of the Criminal Code specifically saves common law defences, except where they are inconsistent with the code.

• (1510)

However, introducing a general prohibition using the words "it is prohibited to wilfully kill an animal," makes the prior common law right to kill an animal inconsistent with the code.

The message next says:

> This defence has a long-standing presence in the Criminal Code, including being available since 1953 for the offence of killing animals that are kept for a lawful purpose.

The fact that the other place would use the prohibition against killing domestic pets as a justification for section 182.2(1)(*c*) suggests to me that they either do not understand or they refuse to address the distinction between domestic animals and wild animals.

We all want a general prohibition against killing domestic animals. No one wants a general prohibition against killing wild animals. To use the same words for both actions betrays the fact that the other place does not see any difference between the two types of animals.

Older legislators were wise to restrict the Criminal Code provisions to domestic animals and cattle. All honourable senators and members of the other place should remember that it is already an offence to kill a wild animal using unnecessary pain, but it has never been an offence simply to kill a wild animal such as in a regulated provincial hunt.

The next part of the message says:

> There are no authorities that suggest that this defence (of lawful excuse) is unclear or does not cover the range of situations to which it is meant to apply.

Again, honourable senators, I cite the case of *R. v. Jorgensen*, a Supreme Court of Canada authority. This is a case where the owner of a video store obtained an Ontario Censor Board approval to stock a specific adult movie on his shelf. The board watched the movie and issued the approval, stating that this movie did not offend community standards of tolerance. The police were of a different mind, so they charged Jorgensen with possession of obscene material. This provision of the Criminal Code prohibits the possession of obscene material without a lawful excuse. Jorgensen showed the court his provincial permit, and the court convicted him.

Justice Sopinka of the Supreme Court of Canada had this to say about it:

> Two propositions which are somewhat related militate against the submission that the OFRB approval [i.e. the provincial permit] can constitute a lawful justification or excuse. First, one level of government cannot delegate its legislative powers to another. Second, approval by a provincial body cannot as a matter of constitutional law preclude the prosecution of a charge under the Criminal Code.

I find it puzzling, honourable senators, that the Department of Justice had not considered this case before dealing with the bill; and I find it more puzzling that the message back from the other place studiously avoids this case.

The importance of this case is that all the provincial hunting permits that exist across the country are the equivalent to Jorgensen's provincial censor board permit. Provincial permits are not lawful excuses for committing federal criminal offences.

The Hon. the Speaker *pro tempore***:** Honourable senators, I must advise the Honourable Senator Furey that his time has expired. Is leave granted to allow the senator to continue?

Hon. Senators: Agreed.

Senator Furey: We know that the Department of Justice is aware of this issue because several years ago provinces came to Ottawa asking for Criminal Code exemptions for their provincial lottery permits that they knew, after Jorgensen, would not be sufficient defences in the Criminal Code. The other place was not studiously indifferent to Jorgensen in that case. Why did it choose to be studiously indifferent in this case?

The next paragraph of the message from the other place does its best to repeat the statement of the Department of Justice when they appeared before your committee. The third paragraph on the first page of the message is devoted to explaining how the Senate amendment to the killing provision is confusing and incoherent.

Senators should know that your committee's first impulse was to eliminate the killing provision altogether. We were of the initial view that the Department of Justice had made a mistake in expanding the killing of animals from domestic animals and cattle to all animals. Virtually the only stated reason that the Department of Justice had for including this offensive provision in the bill was that the Department of Justice did not think that causing unnecessary pain, suffering or injury to an animal included causing the death of an animal. While your committee thought this reasoning was weak, in the spirit of compromise, we laboured to include the word "death" in the prohibition so that the department's unjustified worry could be appeased.

The message back demonstrates the old saying that no good deed goes unpunished.

Honourable senators should note that the courts have developed a clear understanding of the present code. The other place now accuses us of confusing the old understanding with our amendment. My view is that the other place introduced a revolution into the code with section 182.2(1)(*c*), while all the time suggesting that these were merely housekeeping amendments, not to be worried about. Their only intent was to increase the penalties for people who were abusing animals, something we all wanted. I am not sure it is fair for them to now turn around and accuse the Senate of confusion because we are trying to temper the most blatant errors in the bill.

The other House supports their accusation of confusion by saying:

> It has been the law for many decades that persons who kill an animal without lawful excuse are guilty of an offence.

This, honourable senators, is a profound misstatement of the Criminal Code. It has been the law for many decades that persons who kill a domestic animal without lawful excuse are guilty of an offence. I have already suggested to this honourable house why the distinction between domestic and wild animals has always been important. This second failure on the part of the other place to recognize the distinction reinforces my worry that they do not see the real issue. The message back to us that demonstrates a failure and deep misunderstanding of the main issue is an indication that more work must be done.

Honourable senators, the next aspect of the message that was troublesome was the quote:

> To collapse the elements of these two different offences into one will invite a reinterpretation of the well-developed test of "unnecessary" and will add confusion rather than clarity to the law.

To hear this from the other place is akin to hearing your neighbour accuse you of disturbing the peace when you catch him setting your house ablaze and you yell "fire." It was the other place that put this legislation before us. It was they who drafted it. We merely pointed out its defects and offered possible solutions to those defects. Our initial course would have been to eliminate the offending section without any additional wording, so we are twice damned for good intentions.

The message from the other place then turns to our proposed Aboriginal amendments. Senators will recall that because of the existence of the killing provision discussed above, your committee, seeing the implications of this expanding prohibition on killing, saw implications for our native peoples. We addressed this by introducing a provision that would prompt courts to take particular account of the fact that part of our heritage includes the traditional practices of our native peoples. This is more than saying that they may kill using the least painful means. Rather, this provision suggests that the traditional methods of hunting are important to respect. To this message, the other place stated: "Aboriginal practices that do not cause unnecessary pain are not currently offences and will not become offences under this bill." Once again, the message indicates that the other place does not understand the intent of the provision.

• (1520)

In a future case, a judge will arrive at the choice of whether a degree of pain was necessary or unnecessary, much as former Justice Lamer did in *Menard* when he arrived at the decision that the two-minute carbon monoxide inhalation was unnecessary. The judge will assess whether there is a less painful method of causing death on the market and, if there is, then the accused's method will be measured against the ideal method. If the accused's method adds, for example, 30 seconds of unnecessary pain to the death of an animal, there is reason to believe that a conviction could follow.

It is easy, therefore, for the other place to wisely restrict their statement to the Aboriginal practices of Aboriginal people that do not cause unnecessary pain. Everyone knows that the litmus test for unnecessary pain rises with every innovation. By a simple process of comparison similar to *Menard,* traditional practices may indeed come under attack. The addition of the clause recognizing the legitimacy of the traditional practice signals to judges that this category of activity has special significance and cannot be measured against the latest techniques for killing that exist in the marketplace.

This is the first reason that the Aboriginal provision was important; and the House message conveniently avoided addressing it. The second reason that the Aboriginal provision was necessary was a direct response to the expanded killing provision in proposed section 182.2(1)(*c*) of the bill.

I congratulate Senator Carstairs on her initiative to have this whole issue of non-derogation clauses dealt with as a whole, and not piecemeal. Hopefully, at some time in the immediate future, we can move to that because it is, honourable senators, a more sensible and more logical solution to this whole problem.

Honourable senators, the message of the other place turns next to the question of colour of right. Senators should note that following our previous message to the other place, the other place accepted a version of the colour of right defence. Your committee thought that version to be unnecessarily ambiguous when clear words were available and there was no reason not to use clear words. For whatever reason, the other place insisted on ambiguous words and we sent the message back in June 2003 indicating that we thought clear words were preferable. The other place has since sent back the message with their reasoning attached. Of course, the reason does not address why we cannot simply add the provision, colour of right, as a defence in this proposed section. The message refuses to address itself to the clear words of Justice Stevenson of the Supreme Court of Canada in *R. v. Jones and Pamajewon*, which states that colour of right needs to be embraced "within the definition" of an offence in order to be an effective defence.

Honourable senators, we have reached a crossroads with this legislation. It is not the end of the road; it is not the edge of the legislative abyss; and it is not a case of do or die.

As I stated earlier, we must strive to ensure that the good aspects of this bill are preserved and passed into law, as many Canadians desire. Constitutionally, there is nothing to prevent this chamber from referring this bill back to the other place, which has refused to answer our concerns. Perhaps if they took time to address our concerns, and not just simply ignore them, this chamber could possibly agree to disagree and move this important legislation forward.

Honourable senators may well think that these issues are unclear and complex and, therefore, may be hesitant to take action. In the 1800s the great French writer Stendhal said that there is only one rule: "style cannot be too clear, too simple..." The influential British jurist, Lord Johan Steyn, adopted these words on many occasions.

I put it to you, honourable senators, that if you find that the changes to the Criminal Code brought about by proposed section 182.2(1)(*c*) are unclear and not simple, then it is an indictment of this part of the code. The Criminal Code affects lives and its operating spirit should be clarity and simplicity.

Honourable senators should ask themselves, Is this what the killing provision of Bill C-10B does? If senators do not think so, then they should think long and hard about returning this bill yet again to that other place. Thank you, honourable senators.

Hon. John G. Bryden: Does the act of hunting for sport — not for food — to show how good a shot you are if you are a wing shooter with ducks and geese, or to show how good a trapper you are if you are hunting whitetail bucks — constitute lawful excuse for that activity that is carried out by tens if not hundreds of thousands of North Americans and that generates a considerable income level for numbers of outfitters?

Senator Furey: I thank the honourable senator for his question. Presently, the provincial regimes set up with licensing parameters constitute lawful excuse. However, there is nothing in the Criminal Code preventing you from killing a wild animal. You are only not permitted to do it if you cause unnecessary pain. However, if this proposed legislation becomes law, will a provincial licence be a lawful excuse? There is a large question in the minds of committee members that, because of *R. v. Jorgensen*, it will not provide lawful excuse.

Senator Bryden: There was a question at one point during our committee hearings that the Department of Justice would consider a definition of "lawful excuse" in relation to that particular provision, which is new to the Criminal Code. Did they do that? Did we dismiss it? Is such a definition available from the Department of Justice?

Senator Furey: Honourable senators, I believe that it is quite possible to clearly define "lawful excuse " or to use the kind of regime that I referred to with respect to gambling and lotteries, whereby a national exemption for provincial hunting licences could be included in provisions of the code.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, Senator Furey supported Senator Carstairs' initiative to request that exemption clauses be considered in order to allow the First Nations to exercise certain rights and not to see these rights threatened every time a bill is proposed.

We do not know when the House will adjourn. It seems that the committee has to report to it by December. Honourable senators, would it be possible to examine this issue before December 31, in order to allow the application of this exemption clause?

[*English*]

Senator Furey: Honourable senators, I am not exactly sure what the timelines would be, but I will repeat this again: The initiative espoused by Senator Carstairs is a good one. It would take care of trying to deal piecemeal with these non-derogation clauses and with every piece of legislation that comes before the chamber.

• (1530)

Presently, some honourable senator has the adjournment of this matter. The Standing Senate Committee on Legal and Constitutional Affairs is waiting to receive it. We would gladly receive it at any time and move on it as quickly as possible.

Hon. Charlie Watt: Honourable senators I would like to adjourn the debate under my name and speak to this item tomorrow.

Hon. Herbert O. Sparrow: Honourable senators, I have a question for the chairman of the committee before the adjournment motion is put. Is the honourable senator recommending that the issue be referred back to committee? Further, is the honourable senator suggesting that the resolution put forward by the minister of the government in this chamber be voted down; that is, that this chamber not accept it?

Senator Furey: Honourable senators, I made no reference to sending the matter back to committee and I made no reference to the comments made by the Leader of the Government in the Senate with respect to what to do with it. I merely asked honourable senators to listen carefully to what I had to say and evaluate it. If you came to the conclusion that I came to, then you would want to think long and hard about sending it back to that other place yet again. What vehicle you use to do that, or how you do it — whether by going back to committee or by debating it here in the chamber and then voting on it — I am in your hands.

Hon. Anne C. Cools: Honourable senators, might I join the debate? First, I would like to thank Senator Furey for what I thought was an excellent and lucid speech. It was very clear minded.

As I look at the question, and as I look at the issues, the fundamental problem here is a disagreement between the House of Commons and the Senate. The fact of the matter is that the issues on which the two chambers have disagreed have been crystallized and have been identified very clearly. The problem is that neither the House of Commons nor the Minister of Justice will talk to us.

I listened with care to Senator Furey's remarks. Senator Furey did not speak about the minister in the speech; he kept talking about the Department of Justice. Could Senator Furey share with us how we, as the Senate, should deal with such a disagreement?

Senator Furey: Honourable senators, I really have no further comment to make. I know the Honourable Senator Cools suggested at one of our last sessions a two-House conference as she proceeded to explain some of the finer points of that process. I merely ask today that honourable senators examine their conscience with respect to some of the issues that I have raised. If you feel that it is a matter that is not clear or precise, then I urge you to think long and hard about sending it back to that other place yet again.

On motion of Senator Watt, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would now like us to address Item No. 4 under Government Business, and then resume the order set out on the Order Paper.

[*English*]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Sharon Carstairs (Leader of the Government) moved the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

She said: Honourable senators, it is a pleasure to rise to speak today to Bill C-34, the proposed amendments to the Parliament of Canada Act to establish an ethics commissioner and a separate Senate ethics officer.

Honourable senators, this initiative has a long history. The question of regulating the conduct of parliamentarians in matters of possible conflicts of interest has been debated by parliamentarians for over 30 years. In 1973, the Honourable Allan J. MacEachen, then President of the Privy Council, presented a green paper on members of Parliament and conflict of interest. That paper proposed an independence of Parliament act that would have addressed issues of conflict of interest among parliamentarians. However, it was not only Liberal governments that proposed a statutory framework to regulate the conduct of parliamentarians. The Conservative government of the Right Honourable Brian Mulroney proposed several bills that would have established in statute elaborate regimes for parliamentarians with a registrar of interests, a three-member conflict of interest commission, an extensive disclosure regime and detailed rules of conduct, all set out in statute.

The issue has been studied extensively by several parliamentary committees. More than 10 years ago, a special joint committee was formed under the co-chairmanship of our former colleague the Honourable Dick Stanbury from the Senate and Don Blenkarn, then Member of Parliament for Mississauga South. That all-party committee spent several months conducting detailed studies of the issue and then presented a unanimous report. They proposed a detailed code of conduct with an independent adviser to oversee disclosure by parliamentarians, advise parliamentarians of their obligations, and also to investigate alleged breaches.

That code, including the office of the independent adviser, would have been established right in the Parliament of Canada Act. That committee, by the way, included a number of our colleagues, including Senators Oliver, De Bané, Callbeck and Prud'homme. The latter two were then members of the other place. We owe them a debt of gratitude as their report laid the groundwork for subsequent proposals, including the one before us today.

Senator Oliver then took up the torch, if you will, six years ago, when he co-chaired a special joint committee on conflict of interest with Peter Milliken of the other place. That committee reported in March of 1997. The regime they recommended was similar to that proposed by the Stanbury-Blenkarn one, also with a detailed code of conduct and an independent adviser to oversee parliamentarians' disclosure and other obligations. They, however, recommended using the rules of each House to establish the respective codes of conduct rather than the Parliament of Canada Act.

Honourable senators, on October 23, almost one year ago, the government tabled a proposed draft bill to amend the Parliament of Canada Act to establish the office of an independent ethics commissioner, proposing amendments to the *Rules of the Senate* and the *Standing Orders of the House of Commons* in order to implement the recommendations of the 1997 Oliver-Milliken special joint committee on a code of conduct. These proposals were tabled at that early stage as draft documents in both Houses to enable all parliamentarians the earliest possible opportunity to study them and to provide the government with their views at the earliest opportunity.

• (1540)

The Standing Committee on Rules, Procedures and the Rights of Parliament, ably chaired by Senator Milne, with Senator Andreychuk assisting as deputy chair, studied the proposals. On April 10, 2003, the committee deposited with the Clerk of the Senate its eighth report — an interim report on the ethics package intended specifically to provide the government with the committee's advice as the government prepared to introduce the bill that would amend the Parliament of Canada Act.

The bill before us represents the culmination of all these efforts over all these years. The government listened closely to the views expressed by parliamentarians in both Houses. A number of significant changes were made to the original proposal to reflect the views received. Indeed, I am pleased to report that every specific recommendation of the Senate committee has been implemented in the bill. Once again, members of this chamber can take pride in knowing that they have had an important and substantial impact.

I want to tell honourable senators what Bill C-34 would and would not do. First, it would not establish a code of conduct to govern senators. The government proposes in this bill that each House of Parliament establish such a code of conduct. In other words, the House of Commons and the Senate would put their own code of conduct into place through their respective standing rules. In that way, each chamber remains in control of its members and all matters related thereto.

This is consistent with the interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament, which included as one of its key areas of agreement that the rules of conduct, including those currently in place, shall be incorporated into the *Rules of the Senate* following a detailed study. This is made explicit in Bill C-34, which states in proposed subsection 20.5(1):

> The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Bill C-34 would amend the Parliament of Canada Act to provide for the appointment of an independent Senate ethics officer for members of the Senate, and an independent ethics commissioner for public office holders and members of the other place.

Honourable senators, this is possibly the most significant change from the original bill because that bill proposed by the government wanted, of course, to have only one ethics officer, and it was made in direct response to the advice received from the Standing Committee on Rules, Procedures and the Rights of Parliament. The standing committee disagreed with this approach of having one officer and proposed the establishment of a separate Senate ethics officer. Honourable senators, the government listened and Bill C-34 would implement this recommendation.

Members of the other place did not share the concerns expressed. They had no objection to appointing a single ethics commissioner to oversee their members and public office holders, and this is also reflected in the bill before us. I know that some honourable senators questioned that approach, but I am sure we all respect the right of members of the other place to choose their own path, as we have chosen ours.

Another important recommendation of the Senate standing committee related to the method of appointment of the Senate ethics officer. There was some concern that the original appointment process, set out in the government's proposed amendments draft bill, did not provide for meaningful input from the parliamentarians who would be guided by this person. The original proposal provided only that the Governor in Council would appoint the ethics commissioner. The government heard the concerns expressed. Bill C-34 now provides that the Governor in Council shall appoint a Senate ethics officer, after consultation with the leader of every recognized party in the Senate, and after approval of the appointment by a resolution of the Senate.

The committee objected to the proposed term of office of five years — non-renewable — set out in the original proposal. Members of the committee expressed concern that a five-year term was tied to the electoral cycle, which is not relevant to members of this chamber. Concern was also expressed that a five-year non-renewable term would not allow sufficient time for the officer to acquire and then benefit from accumulated expertise. The committee proposed instead a seven-year term of office. Once again, the government listened to the concerns expressed. Bill C-34 provides that the Senate ethics officer holds office during good behaviour for a term of seven years.

The bill provides for the reappointment of the officer for one or more terms. For reappointment, the same procedure would apply as for the original appointment; namely, require consultation with the leader of every recognized party in the Senate, and also approval by a resolution in the Senate.

Honourable senators, the committee had not pronounced on the question of renewability of the term. The bill therefore allows the Senate to make the decision at the time, and based upon the experience and circumstances of the time whether or not to reappoint a particular person to the position.

Honourable senators, the Standing Committee on Rules, Procedures and the Rights of Parliament was not able to reach a consensus on how the Senate ethics officer should be appointed at the time of its interim report to this chamber: created by statute or pursuant to the *Rules of the Senate*. In my speech of May 1 in this chamber I spoke at length answering the concerns raised about a statutory appointment process. I detailed the various authorities, both from the leading treatises and Canadian case law, to explain why the government believes that a statutory appointment process would not, as has been suggested by some, create a significant risk of judicial intervention in the activities of the Senate or undermine parliamentary privilege.

Just as the fact that our Clerk of the Senate is appointed by the Governor in Council pursuant to a statute — the Public Services Employment Act — has never invited judicial intervention in our affairs or undermined parliamentary privilege, so can the Senate ethics officer be appointed pursuant to the Parliament of Canada Act without increasing that risk.

Honourable senators, I do not propose to repeat what I said on May 1. The members of the other place have agreed with the government proposals that the ethics commissioner who will oversee their obligations under their code of conduct be established in the standing rules, and also the obligations of public office holders will be appointed pursuant to statute, namely, the Parliament of Canada Act, as provided in Bill C-34. The government believes, and clearly the members of the other place agree, that this is the best way to ensure that the ethics commissioner is independent and seen by the Canadian public to be independent.

Honourable senators, we in this chamber deserve no less and Canadians rightfully expect no less from us. With a defined term tenure and set grounds for early removal established in a statute that cannot be quickly or quietly changed, we tell Canadians and the Senate ethics officer that the position is not vulnerable. The person holding the position would not need even to contemplate that if he or she were to give unwelcome advice then he or she could be expeditiously removed. We may know that members of this chamber would never do such a thing, but it is critical that the Canadian public see concretely that the holder of the position could not even be subjected to arbitrary dismissal.

As Senator Rompkey said in this chamber on May 8, and Senator Fraser said on May 13, it is not good enough to say, "Trust me, we would not act like that." Canadians expect more and they deserve more. The Parliament of Canada Act is one of our most fundamental statutes. Indeed it confirms parliamentary privilege — itself guaranteed by section 18 of the Constitution Act, 1982. This is the appropriate place to establish this important position.

Before concluding I want to point honourable senators to several important provisions in Bill C-34. First, there are several provisions included for greater certainty to clearly establish that privilege attaches to the activities of the Senate ethics officer and is found in proposed section 20.5(2) providing explicitly:

> The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

This wording is directly responsive to concerns expressed by the Senate Law Clerk and Parliamentary Counsel when he appeared before the Standing Committee on Rules, Procedures and the Rights of Parliament. The bill includes additional safeguards provisions. For example, proposed subsection 20.5(5) states:

> For greater certainty, this section shall not be interpreted as limiting in any way the powers, privileges, rights and immunities of the Senate or its members.

• (1550)

An issue that has also been raised by some senators concerns whether the proposed Senate ethics officer could be compelled to testify and reveal any information disclosed confidentially to him or her by a senator. Proposed section 20.6 provides the following:

> (1) The Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, is not a competent or compellable witness in respect of any matter coming to his or her knowledge as a result of exercising any powers or performing any duties or functions of the Senate Ethics Officer under this Act.
>
> (2) No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.
>
> (3) The protection provided under subsections (1) and (2) does not limit any powers, privileges, rights and immunities that the Senate Ethics Officer may otherwise enjoy.

In addition, clause 38 of the bill would amend the Federal Courts Act to further protect the Senate ethics officer against the possibility that her or his actions might be subject to judicial scrutiny by the Federal Court.

All of these provisions, honourable senators, ensure that the Senate will remain the master of its own internal affairs, including the imposition and enforcement of a code of conduct or conflict of interest code, and that the Senate's privileges will be fully protected.

Honourable senators, we in this chamber carry a weight of responsibility to the Canadian public that is, in my view, arguably heavier than that borne by our colleagues in the other place. Like them, we serve in the Parliament of Canada to further the public interest; however, unlike them, we do not return to the Canadian electorate every several years for renewal of their confidence in our performance and acquittal of our responsibilities here. We are responsible ourselves to ensure that we maintain the high standards of conduct that Canadians expect and deserve.

The person to whom we will turn for advice and to whom we will entrust to oversee our obligations must be someone in whom we, on both sides of this chamber, have the utmost confidence, and he or she must be someone in whom Canadians have the utmost confidence.

The government has prepared Bill C-34 with a careful view to the concerns expressed over the past many years by parliamentarians from this chamber and the other place. Members of the other place have agreed that their ethics commissioner should be appointed pursuant to the Parliament of Canada Act. I believe that the position of the Senate ethics officer must similarly be established in that act.

On motion of Senator Kinsella, for Senator Oliver, debate adjourned.

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—MOTIONS IN AMENDMENT—DEBATE CONTINUED—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Comeau, that the Bill be not now read a third time but that it be amended in clause 12, on page 126, by replacing lines 8 to 12 with the following:

"30. (1) Appointments by the Commission to or from within the public service shall be free from political influence and shall be made on the basis of merit by competition or by such other process of personnel selection designed to establish the relative merit of candidates as the Commission considers is in the best interests of the public service.

(1.1) Despite subsection (1), an appointment may be made on the basis of individual merit in the circumstances prescribed by the regulations of the Commission.

(2) An appointment is made on the basis of individual",

And on the subamendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that the motion in amendment be amended:

(*a*) by replacing the words "by replacing lines 8 to 12" with the following:

"(*a*) by replacing lines 8 to 11"; and

(*b*) by replacing the words "(2) An appointment is made on the basis of individual" with the following:

"(*b*) by replacing lines 26 to 29, with the following:

"may be identified by the deputy head,

(iii) any current or future needs of the organization that may be identified by the deputy head, and

(iv) achieving equality in the workplace to correct the conditions of disadvantage in employment experienced by persons belonging to a designated group within the meaning of section 3 of the *Employment Equity Act*, so that the employer's workforce reflects their representation in the Canadian workforce.".

The Hon. the Speaker *pro tempore***:** Are honourable senators ready for the question on the sub-amendment?

Hon. Senators: Question!

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker *pro tempore***:** Will all those in favour of the sub-amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Will all those opposed to the sub-amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore***:** In my opinion the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** Call in the senators.

Hon. Terry Stratton: Honourable senators, I would like to defer the vote until tomorrow at 3:30 p.m. with the bells at three o'clock.

I have concurrence of the whip on the other side for a 3:30 p.m. vote with the bells to ring at 3 p.m.

Hon. B. Alasdair Graham: Honourable senators, as part of my official duties as the acting chief government whip, we concur on this side to the suggestion of the Honourable Senator Stratton.

The Hon. the Speaker *pro tempore***:** It is suggested that the vote will take place at 3:30 p.m. tomorrow afternoon, and the bells will ring at 3 p.m. Is it agreed, honourable senators?

Hon. Senators: Agreed.

ANTARCTIC ENVIRONMENTAL PROTECTION BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Christensen, seconded by the Honourable Senator Léger, for the third reading of Bill C-42, respecting the protection of the Antarctic Environment.

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

Hon. Senators: Question!

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

Motion agreed to and bill read third time and passed.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:
>
> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s. 35 of the *Constitution Act, 1982*; and
>
> That the Committee present its report no later than December 31, 2003.

Hon. Anne C. Cools: Honourable senators, I think there has been a mistake or a misunderstanding. I have been informed that some senators have been led to believe that somehow or other I am holding the adjournment on this item, when, in point of fact, that is not the case. I had yielded the floor to another senator some time ago. The senator has obviously not chosen to act. I have no objections to this motion and I am very supportive of this initiative. Perhaps the question should be put.

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

Hon. Senators: Question!

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

Motion agreed to.

[*Translation*]

COPYRIGHT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Gill, for the second reading of Bill S-20, An Act to amend the Copyright Act.—(*Honourable Senator Nolin*).

• (1600)

Hon. Pierre Claude Nolin: Honourable senators, allow me to say from the outset that I support this motion. I have a few questions and I presume that the committee that will examine this measure will find the answers.

I want to impress upon you, if need be, the importance of protecting intellectual property. Western societies have recognized these rights as important and amply and adequately recognized the existence of these rights in the economic architecture of our societies.

Let me give a small example to demonstrate how important and valuable intellectual property is. Further examples of the theory I wish to explain are available on the Internet. I will not quote figures, but the math is quite simple. If you take the book value of a company like Coca-Cola and compare it to the number of outstanding shares of the company and the stock market value of each share this afternoon, you will notice a very significant difference, to the tune of $70 billion in fact, which accounts, to a large extent, for the value of the company's intellectual property. It is difficult to assign a set value. You might tell me that the number of customers accounts for this difference, and you would be right. The fact is that the company's intellectual property accounts for this difference. See how important recognizing and protecting these rights is economically.

Some honourable senators may have encountered in the past counterparts from countries I describe as emerging democracies, mainly Eastern European countries. One of their main problems was the recognition of intellectual rights since these are private rights. The individual or the company is recognized as the owner of these rights. The expanding global economy prompted the recognition of this notion, but many have had a hard time understanding the notion of private ownership of intellectual rights and giving it value. It was time they did, because many valuable contributors to their economies were leaving their country for others where intellectual property is recognized.

I support this bill, which extends the recognition of intellectual property to photographers and their work. I have one small concern, and I think I am not alone. I wonder what happens to the right of the photographer when he or she takes a picture of a work that is already copyrighted. We can think of a work of art or a painting. There are conflicting intellectual property rights. I am convinced that the committee will find an answer. There is a way of dealing with these rights and their recognition. Besides that, this is a very worthwhile bill. I urge honourable senators to give second reading to the bill so that it can be referred to committee.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*English*]

USER FEES BILL

SECOND READING—DEBATE ADJOURNED

Hon. Peter A. Stollery moved the second reading of Bill C-212, respecting user fees.

He said: Honourable senators, when I first saw Bill C-212, which concerns user fees and a form of dedicated tax, naturally, as other honourable senators would, I thought of Bill C-56, the anti-smoking bill that we sent to the House of Commons at least twice. I remember the arguments that were used against it, which were, as everyone will remember, that the levy proposed in Bill C-56 was a dedicated tax and that the government would not accept a dedicated tax. Senator Kenny was our main protagonist in that matter, and I thought of his difficulties when Mr. Cullen, whose bill this is, spoke to me about Bill C-212.

• (1610)

Bill C-212 provides for parliamentary scrutiny and approval of user fees set by regulatory authorities and involves an enormous number of programs. This was quite a big issue in the 1970s. However, as I read the material, I learned that user fees go back a long time. There is no real control over them by Parliament. I view a user fee to be a dedicated tax. The money is collected for a specific purpose and it goes into the general revenue fund. By many people's definition, that would qualify as a form of a tax. That leads me to ask: What was wrong with the levy? I do not wish to return to that argument that we all heard here for so long, but this bill certainly made me think of that levy and to wonder what was wrong with it.

Honourable senators, I will not take up a significant amount of time on this matter. This is a short bill. It requires that the authorities go before Parliament and justify the user fee and, when the user fee changes, which apparently it does quite a bit, that the industries paying it shall be consulted. In other words, it brings more transparency into the user fee setting. It also allows people whose industries are affected by it to make their case one way or another.

Honourable senators, there is an enormous amount of public support for this bill. It seems to me that the proper place for this bill is in committee. I do not see any reason or need for me to discuss it further, because it is not a very complicated proposition.

Honourable senators, I support the bill. I am sponsoring the bill in the Senate. I hope that honourable senators will see fit to quickly send this bill to committee, where the issues can be aired properly.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, would the honourable senator take a question for clarification?

Senator Stollery: Certainly.

Senator Kinsella: Could the honourable senator tell us whether or not this bill affects money raising in any way?

Senator Stollery: Honourable senators, money raising certainly would be affected.

I forgot to mention, honourable senators, that this bill was passed unanimously in the House of Commons. I believe it was passed on a voice vote and there was no opposition. However, if I am wrong, I stand to be corrected.

User fees account for a percentage of revenue. The question is one of semantics, as to whether or not a user fee is a tax. The best place to discuss that subject is in committee.

Senator Kinsella: Would honourable senators be correct in understanding that the fees that are collected by the application of this proposed legislation will end up in the Consolidated Revenue Fund?

Senator Stollery: Honourable senators, that is as I understand the process.

Senator Kinsella: I notice that clause 10 of the bill would amend the Financial Administration Act by adding a new section 19.4, which provides:

> The power to make a regulation under section 19 or 19.1 that fixes, increases, or decreases or alters the application of a user fee...

Therefore, it would appear in principle that this bill is very much about the methodology of raising funds.

My question to the honourable senator is: Has he reflected upon whether or not this bill requires Royal Recommendation?

Senator Stollery: Honourable senators, I have not given thought to whether or not the bill requires Royal Recommendation. This returns to the semantics of whether a user fee is a fee-for-service and is, therefore, not actually a tax in legal terms. If it is not a tax in legal terms, it is a fee-for-service. I am not certain that requires Royal Recommendation, but my suggestion would be that the best person to discuss that with is Mr. Cullen, and I would suggest that the committee call Mr. Cullen as a witness and ask him that question.

Senator Kinsella: Does the honourable senator recall the Senate bill that was introduced by our colleague, Senator Kenny, in the last Parliament, dealing with an innovative, creative idea to raise funds to combat the danger of smoking? That bill did not succeed because the Royal Recommendation, it was argued, was necessary. Would the honourable senator inform us whether this is a private member's bill?

Senator Stollery: Yes, this is a private member's bill.

Senator Kinsella: It is my understanding that the government in the other place did not support this bill. Would the honourable senator clarify that for us?

Senator Stollery: I mentioned Senator Kenny's bill at the outset because, as Senator Kinsella points out, it obviously jumps right out at one. In that instance, the decision was made by a Speaker's ruling. Honourable senators should remember that the matter went to the Speaker of the House of Commons. I am certain there were elements of Senator Kenny's bill that the government did not like and this chamber did like, which is why I believe we sent that bill on two separate occasions, and there were two separate Speaker's rulings. I cannot recall the exact basis for the Speaker's ruling, but I do know that on both occasions I did not agree with it.

Senator Kinsella: Honourable senators, a number of questions of principle have arisen in the debate thus far and I wish an opportunity to study them.

Hon. Pierre Claude Nolin: I am sure the Honourable Senator Stollery is familiar with the scheme proposed in Bill C-212 where an agency, before establishing a new levy, or user fee, would have to, on top of informing their clients, comply with a series of conditions as set out in clause 4(1).

Clause 4(2) reads in part:

> ... the Minister must table a proposal in the House of Commons...

Clause 4(2) is followed by a series of subclauses which specify what information must be collected. That information is then sent to a committee of the House of Commons. My question is: Is the committee to which that information would be sent the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations?

• (1620)

Senator Stollery: Senator Nolin has raised a very important question. It says "committee of the House of Commons," but where is the Senate? I certainly agree with him. It is a good question.

Senator Nolin: Perhaps the sponsor of the bill in the Senate can inform the committee that will study the bill in due time that an amendment would be proper to change the phrase "a committee of the House" to "a joint committee of both Houses" to study the information when there is a new levy or user fee.

Senator Stollery: I would have no objection to such an amendment. I noticed that as I was reading the bill as well.

On motion of Senator Kinsella, debate adjourned.

FOREIGN AFFAIRS

BUDGET ON STUDY OF TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Foreign Affairs (budget—release of additional funds (study on the Canada-United States and Canada-Mexico trade relationships)) presented in the Senate on October 2, 2003.—(*Honourable Senator Stollery*).

Hon. Peter A. Stollery: Honourable senators, I move the adoption of the report.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I would ask the chair of the committee to provide a little explication.

Senator Stollery: Honourable senators, the funds that have been approved by the Standing Committee on Internal Economy, Budgets and Administration are for phase two of the project that has been approved by the Senate, our study of NAFTA. The funds are needed to permit some members of the committee to go to Mexico to complete the Mexico City part of the review that we have been conducting of the free trade agreement. I have discussed this with Senator Di Nino, who is very much aware of the situation.

Senator Kinsella: Honourable senators, I believe that the study the Standing Senate Committee on Foreign Affairs is doing is very important. Is the committee working on a specific term of reference?

Senator Stollery: Yes, we are. This is totally within the terms of reference approved by the Senate when we started our study of NAFTA. When we speak of NAFTA, we tend to concentrate on the Canada-U.S. part, but we must remember that the agreement also includes Mexico, which is what this motion is all about.

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

Motion agreed to and report adopted.

HUMAN RIGHTS

BUDGET ON STUDY OF SPECIFIC CONCERNS— REPORT OF COMMITTEE—POINT OF ORDER

On the Order:

> Resuming debate on the motion of the Honourable Senator Chaput, seconded by the Honourable Senator Trenholme Counsell, for the adoption of the fifth report of the Standing Senate Committee on Human Rights (budget—study to hear witnesses with specific human rights concerns) presented in the Senate on September 25, 2003. —(*Honourable Senator Lynch-Staunton*).

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to raise a point of order. I could have raised it last week, but I wanted to raise it when the chair of the committee was here. I understand that she was recently the victim of a nasty accident. I am glad to see her back and I hope that she has recovered as well as she looks. Out of basic courtesy, I thought it was appropriate to wait for her to be here before raising a point of order, rather than taking advantage of her absence.

The point of order is simple; it is that the authority being asked for by the committee is not within its terms of reference, which are quoted in the report to help justify the request for funds.

The terms of reference were introduced on May 14 and were approved by the Senate on May 27. They read:

> That the Standing Senate Committee on Human Rights be authorized to hear from time to time witnesses, including both individuals and representatives from organizations, with specific Human Rights concerns;
>
> And that the committee report to the Senate from time to time and table its final report no later than March 31, 2004.

Nowhere in these terms of reference is there a request to travel. It has always been our practice that if a committee believes that it must travel to fulfil its terms of reference, it includes that request in its original terms of reference so that the Senate is informed, at the time of the request, exactly how the committee intends to carry out the commitment the Senate agrees it is to undertake. The wording is usually to the effect that the committee can travel from time to time within and outside of Canada.

This is not in the original terms of reference. The authority here being requested is that some members of the committee, and I believe the clerk, be authorized to travel abroad on a fact-finding mission.

I will not argue the validity or non-validity of the trip. I will restrict myself to the point of order, which is that the terms of reference do not authorize any travel by this committee anywhere. To support my contention, I will quote Erskine May, twenty-second edition, page 633, under the subheading "Orders of reference":

> A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed.

I would also like to quote Beauchesne's sixth edition, page 233, paragraph 831(2):

> A committee is bound by, and is not at liberty to depart from, the Order of Reference.

Based on those two authorities, it is my contention that the terms of reference limit the committee's study of human rights to the national capital region because no authority was requested at the time to pursue its study beyond that geographical area.

Madam Speaker, I ask you to consider my point of order and, hopefully, confirm it.

Hon. Shirley Maheu: Honourable senators, when the Standing Senate Committee on Human Rights first contemplated travelling to Geneva and Strasbourg, the visit to the United Nations and to human rights institutions of the Council of Europe was seen as a means to assist the committee in better understanding Canada's international human rights obligations and to get a bird's-eye view of the structure of human rights protection and promotion at the international level.

In our era of globalization, human rights cannot be studied from a strictly national perspective. Canada's leadership in international forum, both regional and universal, speaks loudly and clearly about the country's commitment to the international promotion and protection of human rights. As a standing committee of the Senate of Canada, we not only share this commitment, but are also an integral part of its implementation.

Committee members gained knowledge of Canada's obligations under the Inter-American Convention of Human Rights in the course of the previous study undertaken by the committee, during which, I might advise, the committee did travel to Costa Rica.

• (1630)

They also learned about the structure and the mandate of the institutions that oversee the situation of human rights in the Americas. The visit to human rights bodies in Geneva and Strasbourg will allow the committee to expand its knowledge of the international human rights system and effectively implement a global approach to the human rights issue consistent with Canada's role as a leader in this area.

Meeting with officials from the European Court of Human Rights and representatives from other human rights' institutions of the Council of Europe is essential to the committee's work, particularly in the light of close interaction between bodies of the inter-American system for the protection of human rights and their European counterparts.

It is also relevant, especially now, because our own courts often look to the jurisprudence of the European Court of Human Rights and its interpretation of the European Convention on Human Rights. This is when they defined the scope and content of our own Charter and provincial human rights legislation.

Meeting with representatives from United Nations institutions in Geneva will, as mentioned earlier, contribute to the committee's better understanding of Canada's international obligations and their impact on Canadian domestic law. This is directly related to the general mandate of this committee.

We now know it is also related to the specific study the committee is currently working on. The study upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or a common law relationship and the policy context in which they reside has further enhanced the relevance of the trip to Geneva and Strasbourg. Several witnesses have brought to the attention of

the committee concluding observations and recommendations of international bodies, such as the Human Rights Committee and the Committee on Elimination of Discrimination against Women. These bodies have specifically identified the lack of protection of Aboriginal women's matrimonial rights as a source of concern and a violation of Canada's international obligations, which requires action on the part of the Government of Canada.

The committee has been asked to make recommendations as to possible solutions to address this issue in Canadian law. However, the reality is that this is not only an international issue, but also a national one. Now, more than ever, it is crucial for the Standing Senate Committee on Human Rights to include in its work the international dimension and repercussions of the issues it studies.

In addition to allowing the committee to gather critical information for the purpose of its work, this trip will advance the work of the Canadian Senate, just as the trip to Costa Rica did in the context of the previous study.

[*Translation*]

Honourable senators, the decision must be made now for one very simple reason: in order to satisfy the needs of the committees and the Senate. The trip is planned for our recess week. A great deal of time and effort has gone into the preparation of our program. This trip has been organized and supported by all members of the committee, including the opposition. Departure is planned for Friday, October 10. That is why, honourable senators, I would appreciate your immediate attention to this report.

[*English*]

Senator Lynch-Staunton: Honourable senators, that is a very eloquent statement that one cannot fault, but the argument is not on the validity of the trip. I made a point of saying at the beginning of my intervention that I am not here to argue the merits or demerits of the trip. I am here to point out through a point of order that the trip has not been authorized within the terms of reference approved here in May.

Reference was made to a trip to Costa Rica. That was as a result of a specific instruction by this chamber to look into the Inter-American Convention of Human Rights. It was part of the committee's mandate to go to Costa Rica, where the centre is located. Here, we have general terms of reference saying that the committee will meet from time to time. I do not want to repeat myself except to say that meeting from time to time and having specific meetings abroad on specific dates is not the same thing. Therefore, I reassert or re-emphasize that there is a valid point of order here. If the Senate wants to authorize such a trip, then it is up to the committee to come forth with proper terms of reference, after which we can decide accordingly.

Since it is not within the mandate, I do not think that we should even be considering this item. That is the basis for the point of order.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, there are times I do not agree with the honourable senator. When the honourable senator alludes to the committee's order of reference, it seems the order of reference is sufficiently broad to allow for study and meeting with the people who deal with these questions of human rights.

The order of reference received by the committee, I agree, does not mention travel specifically. Still, it seems the order is open enough to permit travel.

Before any special expenses are incurred for such a trip, the committee must prepare a budget showing the expenses related to the travel, which are not special expenses, for the people going on this trip. The budget is presented to Internal Economy, which examines it. Then, Internal Economy accepts, rejects or modifies the budget, in accordance with the needs of this committee and the other committees.

In this case, that exercise was carried out. The Standing Committee on Internal Economy, Budgets and Administration examined the budget and agreed to a certain amount of money for the proposed trip. The Chair of the Standing Committee on Internal Economy, Budgets and Administration tabled her report in this house. That report was accepted by the Senate. The Chair of the Standing Committee on Human Rights is submitting to us on behalf of her committee a proposal that has already been studied and is intended to enable this committee to pursue the mission this Chamber has given it to study human rights issues.

That request, honourable senators, appears to comply totally with our procedure. As a result, the permission to travel should be given. It is of course up to this Chamber to decided whether the budget we have before us at the request of the committee chair ought to be accepted. That is precisely what we need to address. The request from this committee is, therefore, totally in order.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the point of order raised by Senator Lynch-Staunton speaks directly to the issue of an order of reference. Either we consider these orders of references as being important or we do not. The order of reference that was given to the Standing Senate Committee on Human Rights — and Senator Maheu has drawn our attention to it — was to study the Inter-American Convention of Human Rights. In order to study that convention, it was perfectly reasonable that the committee ought to meet with those who administer the Inter-American Convention of Human Rights. The visit to the Human Rights Centre of the OAS in San José was well within their mandate. They were studying not simply the Inter-American convention but, more importantly, Canada's adherence or non-adherence to the OAS convention. That was the Canadian interest and a specific order of reference was given to the Human Rights Committee to study the Inter-American Convention of Human Rights for which travel was necessary and, I thought, most appropriate.

• (1640)

The office of the United Nations High Commissioner for Human Rights is located in Geneva, as is the office of the United Nations Committee on Human Rights, to which communications can be filed by Canadians because of the ratification by Canada in 1976 of the International Covenant on Civil and Political Rights and the ratification by Canada of the two optional protocols. There is a specific Canadian interest in the operations of the committee that administers the International Covenant on Human Rights because Canada has ratified that covenant.

There is also the International Covenant on Economic, Social and Cultural Rights, to which Canada submits periodic reports on its progress, together with the provinces, in meeting the obligations that it has assumed under that covenant. There is a separate human rights committee that examines the Canadian reports.

I believe that it will be important for the Senate to study the reports that Canada has submitted under both of those international treaties and what the international human rights committees based in Geneva have said about Canada's performance. Honourable senators will recall that two years ago, Canada was roundly condemned by the committee that administers the International Covenant on Economic, Social and Cultural Rights because of the unacceptably high level of child poverty in Canada.

Thus, it is incumbent upon Parliament to delve into what the international human rights committee is saying. Should we be looking at the International Covenant on Economic, Social and Cultural Rights? Should we be looking at the process given that Canada's periodic report under the International Covenant on Civil and Political Rights has just been received? The Senate would want to make a determination as to whether we would want to give priority to the Standing Senate Committee on Human Rights to examine the International Covenant on Economic, Social and Cultural Rights; or, do we want to give priority to the committee examining the International Covenant on Civil and Political Rights? That is why we give a specific orders of reference to our committees to study the kinds of things that the Senate wants to have studied.

Reference has been made to a visit to Strasbourg. Yes, the work in the field of human rights that is done by different organizations in Strasbourg is interesting. However, the question is whether there is a Canadian application to the European Convention of Human Rights. We would have to provide a specific order of reference such that the Senate wants its Human Rights Committee to give priority to conduct such a study.

Providing a general order of reference would be like saying to the Standing Senate Committee on Social Affairs, Science and Technology that it has a mandate to study health and, therefore, travel around the world to study health. Experts in different fields of health live in all areas of the world. Our resources are fairly limited. The Senate establishes the priorities and we use the mechanism of specific orders of reference. A question was raised as to the priority that committees are giving to proposed legislation and where that fits into the order of priorities of our standing committees, whether it be government bills or private members bills.

The orders of reference given by the Senate are extremely important. Committees must live within the bounds of those references because that is the will of the Senate. The point of order raised by Senator Lynch-Staunton is extremely important because otherwise the system would fall apart.

Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker): Do any other honourable senators wish to speak on the point of order raised by Senator Lynch-Staunton?

Hon. Terry Stratton: I would like to reinforce what Senator Kinsella has said. The description of asking permission to do a study is approved. If it were broad enough, it would allow one to do anything, as Senator Kinsella has stated.

I have a question for the Deputy Leader of the Government in the Senate. Would it be fine, if the mandate requested by any committee were broad enough, for the committee to go anywhere in the world, having requested the budget to do so? There has to be a point at which a line is drawn or a fence is put up. The committees owe it to this chamber, prior to coming here, to know that they have done enough work to realize where they have to go and what they have to study. That should have been looked at in the beginning. If this particular committee wanted to cover this off under that study, surely to goodness that would have been done.

It is astonishing that a committee would have the temerity to not only look at taking the trip, but also to plan the trip, to establish the dates and to book the tickets before it comes to the house for approval. The whole thing was planned. The dates are set and they are going without a mandate from this chamber.

Senator Maheu: That is not true.

Senator Stratton: With apologies, honourable senator, that is my understanding.

Senator Lynch-Staunton: That is what we were told.

[*Translation*]

Senator Robichaud: Honourable senators, I do not totally agree with Senator Stratton that the committee was a bit hasty in organizing its trip. I think that trips must be organized in advance, because plans can always be changed. Often, waiting till the last minute costs more, and then the committee is criticized for not getting organized earlier.

Senator Stratton has said that it was not a good thing to have an order of reference so broad that a committee could do anything it wants. Even with a broad order of reference, all budgets have to be approved by this Chamber, and even with a broad mandate, each committee must go before the Internal Economy Committee. A committee must obtain approval for a budget in keeping with its estimated costs for a specific study. I think that is exactly what this committee has done.

When we approved the budget of this committee, the committee was not free to go anywhere it wanted. The committee is going to two specific places, with a specific amount of money that cannot be used for other purposes. Even if the mandate is open, this Chamber always has the power to accept or refuse what a committee proposes to us.

• (1650)

Hon. Pierre Claude Nolin: Honourable senators, I had not intended to speak, but there is one trap we must not fall into. Your Honour must ponder this, because it is important. Senator Robichaud would have you believe that a decision has already been made; that is what his remarks suggest. The Standing Committee on Internal Economy, Budgets and Administration looked at the issue, gave its approval and tabled its report. Has this report been adopted? It should not have been, because the real decision is the one we are being asked to make today. The real question is whether or not we approve the committee's budget. The answer is that it is not the Internal Economy Committee's report that matters, but the decision we will be making today. According to Senator Robichaud's argument, this motion is redundant, outdated, when in fact it is very important, because it will authorize the committee not only to spend, but also to travel.

I would not want Your Honour to fall in this little trap of thinking that, because we approved the report of the Internal Economy Committee, we therefore have already given our consent. That is not true, and I do not want it to be interpreted as such.

Senator Robichaud: In response to the Honourable Senator Nolin, in no way do I mean to infer that, because the Internal Economy Committee agreed to the budget, we must agree. Absolutely not. I said earlier that the Senate will make the final decision. I was simply referring to the procedure that a committee must follow to get its expenses approved. This is the procedure we are following. In short, even if the committee and the Senate give their approval, the process must be presented to the Senate. I do not want to mislead anyone, and I want to ensure that this is quite clear.

Senator Lynch-Staunton: I want to remind the Honourable Senator Robichaud and all honourable senators that it is customary, when a committee asks for a specific mandate to consider a particular subject, for its original request to include a request for permission to travel, if the committee feels this is necessary to properly execute its mandate and reach a successful conclusion. This must not be done a few months after the fact. Senator Robichaud in particular must remember that he wrote it, and requested that the words "travel abroad" be struck from several mandates for budgetary reasons. If the committee wants to travel within or outside the country, it must indicate this in its initial request, when its mandate and budget are first debated.

This committee has ignored this custom by not initially requesting such authorization but by requesting it at the last minute. I too am offended, not only by the request to exceed the committee's original mandate, but also by the indication that all the arrangements have been made and that the committee is leaving in three days. Frankly, this is a bit presumptuous, to say the least.

Senator Maheu: That is totally false. I said that the arrangements had been made, but without the Senate's approval, never. I say to Senator Lynch-Staunton that this is untrue, as he well knows.

[*English*]

The Hon. the Acting Speaker: Are there any other senators who wish to speak on the point of order raised by Senator Lynch-Staunton? If not, I thank all honourable senators. The chair will seek advice and give an answer to this question as soon as possible.

COPYRIGHT ACT

BILL TO AMEND—NOTICE OF MOTION TO WITHDRAW FROM BANKING, TRADE AND COMMERCE COMMITTEE AND REFER TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

Leave having been given to revert to Senate Public Bills, No. 3:

Hon. Joseph A. Day: Honourable senators, I was temporarily out of the chamber when the Honourable Senator Nolin so succinctly and effectively spoke on this issue. I missed the reference to the committee. I would propose that this item go to the committee that has dealt with other copyright issues in the past, that being the Standing Senate Committee on Social Affairs, Science and Technology. That committee dealt with the other most recent copyright legislation. I have spoken to the chair of the committee, and he is prepared to receive this bill. With the permission of honourable senators, I propose, seconded by Senator Mahovlich, that Bill S-20 be not sent to the Standing Senate Committee on Banking, Trade and Commerce but, rather, to the Standing Senate Committee on Social Affairs, Science and Technology.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I moved this motion and I have no problem with what Senator Day is proposing.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, if we proceed this way, it seems to me that there is a procedural problem in terms of overturning a vote that would require, from my point of view, a two-thirds majority. I think it would be much better if we simply asked for unanimous consent to have the "Standing Senate Committee on Banking, Trade and Commerce" changed to the "Standing Senate Committee on Social Affairs, Science and Technology," rather than going via a motion.

To add to this, I was trying to remember which committee had dealt with copyright before, and I had a recollection that it was the Standing Senate Committee on Legal and Constitutional Affairs. Senator Robichaud thought it was the Standing Senate Committee on Banking, Trade and Commerce. Senator Day is absolutely correct, in that it was the Standing Senate Committee on Social Affairs, Science and Technology.

If we simply, by unanimous consent, agree to change "Banking, Trade and Commerce" to "Social Affairs, Science and Technology," we will avoid a procedural problem.

Hon. John Lynch-Staunton (Leader of the Opposition): If I may, I have no objection to which committee this item is referred except that certain senators, who are not present now, agreed to the motion that it go to the Standing Senate Committee on Banking, Trade and Commerce. They are probably on duty elsewhere. It is not my intention to delay this matter, but to be fair to those who were here during the first question and not here for the second. Perhaps, with leave, Senator Day would give notice of motion that tomorrow he will make that recommendation so everybody will be alerted that a change is being requested, rather than have those people learn that a change was made in their absence without notice.

Senator Day: I am sorry to have caused this problem, honourable senators. I was only out for a short while. In the interest of expediting this matter, I give notice that I will be moving tomorrow that the matter be referred not to the Standing Senate Committee on Banking, Trade and Commerce but, rather, to the Standing Senate Committee on Social Affairs, Science and Technology.

Senator Lynch-Staunton: I would suggest that the honourable senator ask leave to give notice today so that the matter may be debated tomorrow.

Senator Day: I would then ask for leave.

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

Hon. Senators: Agreed.

[*Translation*]

Senator Robichaud: It should be recorded in the minutes that the Honourable Senator Day gave notice, and notice was duly given.

[*English*]

Senator Kinsella: I will simply ask the chair to look into how strong the majority has to be, if a vote is taken on the motion of which we have now received notice. It is my submission that we need more than 50 per cent plus one, that two-thirds is what is needed.

If there is a vote on it, the chair is given a head's up as to what rule applies.

[*Translation*]

Senator Robichaud: Honourable senators, I do not object to checking the rule. I predict there will not be any problem adopting this motion, since we almost agreed to it by unanimous consent. Everything should be carried out properly once the motion is presented tomorrow.

[*English*]

STUDY ON HEALTH CARE SERVICES AVAILABLE TO VETERANS

INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the consideration of the eighth report (interim) of the Standing Senate Committee on National Security and Defence (Subcommittee on Veterans Affairs) entitled: *Fixing the Canadian Forces' Method of Dealing with Death or Dismemberment*, deposited with the Clerk of the Senate on April 10, 2003.—(*Honourable Senator Meighen*).

• (1700)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have a note that this important matter is at day 15 on the Order Paper. The report in question, as honourable senators may recall, had its origin in the tragic experience of Major Bruce Henwood. Major Henwood was serving with the Canadian Forces in Croatia in 1995, and while out on a measure there, he had an unfortunate accident where he lost his limbs when a Russian anti-tank mine exploded. That incident was only the beginning of a long and painful ordeal for Major Henwood and his family.

More recently, tragic events affected two of our Armed Forces personnel in Afghanistan last week, one of whom was a resident of my own province of New Brunswick, Sergeant Short.

The report of our Subcommittee on Veterans Affairs looked into the issue of Major Henwood, and how he had faced such an ordeal in trying to get the Canadian Forces insurance plan to cover him. In short, at that time only those of the rank of colonel or above were covered. Major Henwood was below the rank of colonel and was not covered.

At the end of the day, because of the work of our committee, that has been changed and all members of the Armed Forces who are injured or, more tragically, lose their lives, notwithstanding their rank, are covered.

This is an important report. I know that my colleague, Senator Meighen, will continue the debate.

On motion of Senator Kinsella, for Senator Meighen, debate adjourned.

UNIVERSITY RESEARCH FUNDING FROM FEDERAL SOURCES

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the matter of research funding in Canadian universities from federal sources.—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, there is no wiser investment of public funds than the investment of a country in the education of its next generation of leaders, and also in the new generation of knowledge. The first is achieved by ensuring that the availability of the necessary financial means will ensure access to post-secondary education of our students; and the second is achieved by underwriting by the state of cutting-edge research.

The debate to date on this important inquiry has drawn our attention to a particular passage in the Martin-Chrétien government's last Speech from the Throne. Here is what the federal government of Finance Minister Paul Martin and Prime Minister Jean Chrétien told Canadians about their plan:

> It has invested in access to universities and in excellence in university research because Canada's youth need and deserve the best education possible, and Canada needs universities that produce the best knowledge and the best graduates.

Therefore, honourable senators, the first question is how well has this Martin-Chrétien plan worked in terms of access to our universities across Canada?

In the universities and colleges, we have seen Canadian families and Canadian students hit with substantial increases in tuition. The students are often holding down one or two jobs while at the same time trying to attend university. The financial resources of these assiduous students nevertheless are shrinking.

In order to access post-secondary education, Canadian students are borrowing more to finance their education than ever before. I am confident that every member of this chamber has personal knowledge of this serious financial problem faced by our students.

Clearly, student indebtedness is a national disgrace. However, it also represents, honourable senators, a failure of Canada to meet its international obligation to make post-secondary education more financially accessible.

As we had occasion to mention in an item under debate a few moments ago, Canada is a party to the international treaty law under the International Covenant on Economic, Social and Cultural Rights, ratified by Canada. This is important because, when Canada ratified the International Covenant on Economic, Social and Cultural Rights, it did so with the written consent of every jurisdiction in Canada. Every province in Canada replied to a letter that was initially sent out to the premiers by Prime Minister Pearson. It took many years, but in 1976 all of the jurisdictions in Canada agreed in writing that Canada should ratify this international human rights treaty.

I wish to draw to the attention of honourable senators Article 13 of this treaty, to which we have obligations under international treaty law, provide as follows:

> 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right...
>
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

Honourable senators, not only have we not been meeting our human rights obligations under international law, higher education has not become progressively freer under the Martin-Chrétien government. In the past 10 years, we have seen the opposite occur. Canadian students are more and more in debt. As a country, we are in violation of our international agreement as well as violating the economic future of our youth.

Supporters of the status quo will sail out the Millennium Scholarship Fund as this government's answer to the national failure to address access.

• (1710)

However, honourable senators, the Martin-Chrétien government's flagship, the Millennium Scholarship Foundation, is like the ships of the Canadian Steamship Line. Neither do much for the Canadian worker, nor for the worker's family members who face exorbitant costs to access Canadian colleges or universities. Indeed, the Senate ought to consider a focus study on the illusion that the Millennium Scholarship Fund represents a commitment to provide accessible education to all Canadian students.

The second matter to be examined from the passage that our colleague quoted from the Speech from the Throne is how fair the Martin-Chrétien plan has been with respect to investment in research. We have learned from those who have participated in this debate that the Martin-Chrétien research spending has been very unfair to Atlantic Canada. Senator Moore told us:

> The information revealed by my research points to a disparity which exists between Atlantic Canadian universities and researchers as they have been short-changed compared to their counterparts in the rest of the country.

It is clear that there is a systemic problem in the way the federal government funds research in our universities. This systemic problem has had a special adverse impact on institutions and researchers in Atlantic Canada.

The model upon which federal research funding is allocated is flawed and discriminatory. Senator Moore has accurately explained how, for example, the Canada Research Chairs Program is based on the history of an institution's receipt of grants from the CIHR, NSERC and SSHRC — no history, no money. Even their provision for "smaller" universities has the effect of discriminating against Atlantic Canada because "smaller" is still defined in relation to the institution's history of receiving, not any factor related to their actual size.

Further, the Canadian Foundation for Innovation has similar effects of discriminating against Atlantic Canada. It requires that in order to get 40 per cent project funding, the other 60 per cent has to be in place from either the university or the private sector. With the relatively small size of university endowments and, in fact, the private sector in Atlantic Canada, this is almost an insurmountable hurdle to overcome. As well, in the CFI, which disburses public funds, only two of its 15 board members hail from Atlantic Canada and only eight of its 118 multi-disciplinary

board members that decide on funding hail from Atlantic Canada, while 25 hail from the United States and five hail from France. How is Canada's public good served when a board composed of more than one quarter non-Canadians, who outnumber particular regions of Canada, decides how this country allocates its research money?

Honourable senators, the Canada Social Transfer Agreement is based on funding per capita as opposed to funding per student. This means that provinces with a disproportionate number of students compared to their population do not receive the same benefit as those with a more proportional comparison. This has the effect of discriminating against Atlantic Canadian institutions because it is those institutions that do have a disproportionate number of students. In fact, some communities in Nova Scotia would not exist had churches not founded universities there over the last two centuries. This also has the effect of punishing provinces whose universities accept students from other provinces, as they do not receive the benefit of the added per capita transfer because their legal permanent address is their home province, not the province in which they are attending school.

While these funding formulae may be academic exercises for those who formulate them, they have dire consequences for post-secondary institutions in Atlantic Canada. Honourable senators know that systems neutral on their face can nevertheless be discriminatory in their effect. Research goes to the heart of the academy. While this notion has been challenged in recent years, research and teaching are traditionally said to be complementary in nature. Active researchers are active teachers. The academy teaches research and researches teaching.

Honourable senators, if post-secondary educational institutions, in any region, cannot qualify for research funding because of systemic barriers, its researchers will go to the institutions that do qualify. This has been the case in my own province. I know of professors lost to Ontario and British Columbia, and I know of another professor who became so frustrated with the lack of research funding that she is taking an unpaid sabbatical leave to do research in Toronto. Where the best professors go, the students follow. Enrolment in universities is up despite tuition doubling in the past decade, and we need more and more teachers, and teachers who are able at the same time to do research.

If we are to restore equity to the system, we need to do two things, in my view. First, we must agree that any funding formula that excludes members of the Canadian Association of Universities and Colleges is wrong and must be fixed. Any public university or college should be eligible for research funding based on three criteria: the academic merit of their proposal, service performed to the public good and adequate budgeting of the resources requested. This idea that eligibility for funds be based on past history of receiving grants is like saying that only past lottery winners can buy a ticket for Friday's jackpot.

Second, post-secondary education funding needs to shift paradigms to focus on the students actually attending the institutions. Funding should be based on student population, not provincial population. This way, the students help drive funding by the choices they make, as opposed to having funding driven by choices of those who will not suffer the consequences of their choices, namely, a poor education.

Whatever direction is taken, honourable senators, we must also recognize the role played by the provinces in running post-secondary education systems. Like health care, we only decide how much the federal government will contribute, while they decide how that money is spent and are tasked with finding the money to cover our shortfalls. Any action taken must not be taken in isolation from the provincial ministers responsible for post-secondary education research. To this end, I will conclude by joining with those who believe that the time has come for the Government of Canada to have a federal ministry for post-secondary education and research. Such a ministry would make the work with the premiers, who have, as we said, the constitutional responsibility for education, much more focused work. Currently, the federal government has its involvement in post-secondary education and research spread across far too many departments and agencies. If the promotion of research were facilitated by greater focus, so also would be the effectiveness of the federal machinery of government, if it was more focused, and more focused, I suggest, in a specific dedicated ministry for post-secondary education and research.

• (1720)

Hon. Laurier L. LaPierre: I rise to speak to the many important questions that have been raised by my honourable colleague, who knows much more about these things than I do.

I rise to approve the spirit of the statement made by Senator Moore to the effect that as a nation we need to spend more money to make our student population capable of attaining their ambitions, their desires and their dreams.

It seems to me, however, that in this process we are forgetting certain things. We are forgetting, first, that the university system is a total mess. It is essentially the place where madness reigns, and reigns supreme. It is an empire built by a considerable number of people who keep building empires that cost more and more money to house, to keep going, to administer and fill with students. There are thousands of students in one classroom, lacking seating space, sitting in the stairs or standing up. I was told by a student on the plane this morning on her way to Ottawa that if she is not at her class 20 minutes in advance, she will have to stand up in the back because all the seats will have been taken, as well as every cement step going down into the auditorium. A little professor will come to teach these hundreds of students, hoping that they will be able to learn something.

There is something profoundly wrong in the process of how we approach post-secondary education. Post-secondary education is divided into two or perhaps three categories. There is the category of apprenticeship, of trades and skills. No one talks about those areas when it comes to post-secondary education. No one talks about the hundreds of thousands of dollars that need to be spent, although we know that 10 years from now we will have to import skilled labour into our country to do what our society considers to be jobs that are perhaps not as important as others.

We are not developing the appropriate skills and talents. We have no structure of apprenticeship programs to make that possible. A considerable number of young people, particularly young men, drop out of school at grade 10 because they feel that there is no future for them. They cannot go to university because their parents cannot afford it.

I will give you an example, honourable senators. Last night I was in North Bay speaking to the Canadian Club. We were having a discussion about this subject. A lady said to me that her grandchild had come to the university. She said that they needed $14,000 for her to live in residence, for her tuition and her student fees, so that she could enjoy the totality of the experience of being a student. The girl's parents do not have this kind of money. However, she is lucky because her grandparents have a big house and consequently she can live with them and go to school at the same time.

I asked myself, why is that the case? Why is it that in a rich country like ours it is not possible for our young people, who have the capacity to pursue skills or education, to afford to do so?

There are reasons for that phenomenon that must be looked at, honourable senators. The first one is the imperial building mania of universities. Maybe we should seriously consider undergraduate teaching to be done in undergraduate institutions, and post-graduate work, to obtain a Ph.D., to be done by universities, which would be run completely by the federal government.

I agree with Senator Kinsella that the time has come for the federal government to assume its responsibility and to create a ministry of higher education and something to do with skills. Since I am not a constitutionalist, I do not know how to put it. The provinces can say goodbye. What is happening now is that the federal government transfers enormous sums of money to the provincial governments for higher education purposes. The money often does not go there. Governments know that if they receive a millennium grant, what they receive is deducted from the grant or loan they might have received. We do know that a lot of the money finds its way into the consolidated revenue fund of the province; there is no accountability.

The time has come to end the practice of giving blank cheques to provinces. The time has come to do as we are doing with regard to health care, to demand exact accountability of the sums of money that are given.

The same may be said — and I see Senator Pearson over there — about the money we transfer for child care. Much of that money is used to build roads or for other purposes than what it was intended for by the federal government.

I agree that we must do something. We must re-assume the responsibility of the federal government, and the federal Parliament, to be the people's Parliament and government and to serve the people totally and completely.

Further, the Confederation we have was created in 1867 when almost 90 per cent of our population was rural, and this was the case until after the Second World War and into the 1950s. Now we have an urban society where 85 per cent of our people live. Maybe the time has come to create a confederation of city states rather than provincial states, with new parameters and new paradigms — to use a word we used in the 1970s under Shirley MacLaine and the human potential movement, which I have not heard for 30 years.

I thank my honourable friend for bringing this matter to our attention, and I hope all senators will participate in this important debate.

On motion of Senator Losier-Cool, debate adjourned.

[*Translation*]

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY LEGAL AID

On the Order:

> Resuming debate on the motion, as modified, of the Honourable Senator Callbeck, seconded by the Honourable Senator Bacon that the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters; and
>
> That the Committee report no later than December 31, 2003.

Hon. Maria Chaput: Honourable senators, I am entering the debate on the notice of inquiry given over a year ago by the Honourable Senator Callbeck on the legal aid system in Canada, and particularly the difficulties experienced by many low income Canadians in obtaining adequate legal aid for both criminal and civil matters.

I wish to congratulate the many honourable senators who have spoken on this, making us aware of the importance of the issue and demonstrating the inequalities and weaknesses of our present system.

[*English*]

Our constitution is founded on the rule of law. It is our right to expect the even application of the law to all Canadians, rich and poor. We are all aware that Canada's laws are increasingly complex and specialized. We all know that professional legal advice is extremely beneficial, and many times essential, for legal disputes.

[*Translation*]

A number of my colleagues who have added their voices to Senator Callbeck's have spoken of problems in their own provinces.

• (1730)

That is precisely where the primary problem lies in our legal aid system in Canada. The provinces and territories are now in charge of financing legal aid in civil cases, whereas the federal government has maintained a shared responsibility specifically with respect to legal aid in criminal cases.

Until 1995, the federal government, under the Canada Assistance Plan, supported delivery of legal aid services in civil cases. In 1995-96, this plan was included in the Canada Health and Social Transfer, which covers health, education and social programs. This is a federal transfer that is allocated to each province based on a number of agreements between the department, on the one hand, and the provinces and territories, on the other hand.

In 2002, the Manitoba Association of Women and the Law indicated that:

> Because a lump sum transfer is involved, the provinces and territories determine their own priorities for this funding. In addition, the federal government cannot dictate the way these funds are spent, nor can it set national standards.

Thus, it appears that legal aid in Canada is no longer a national system of justice, but a program that varies from province to province.

In 2001-02, the provincial and territorial governments committed some $443 million to legal aid programs. Contributions varied greatly. For example, according to Statistics Canada 2003, pages 26 and 27, we read:

> ... in 2001-2002, the contribution per capita was $20.46 in British Columbia, $10.39 in Manitoba, $6.31 in Alberta and $3.05 in Prince Edward Island.

Legal aid contributions are not the only elements that vary. Statistics Canada, in its 2003 report, states, on page 5, that "the organizational structure, eligibility criteria, and operation of the program differs" from one province or territory to another.

Therefore, honourable senators, there is no longer a common system across Canada.

In 2002, Sidney B. Linden, Chief Justice of the Ontario Court of Justice from 1990 to 1999, and board chair of Legal Aid Ontario, stated as follows:

> Access to justice for everyone — regardless of income — is a fundamental principle of democracy and the rule of law. Equal access and protection under the law require that individuals have legal representation when before the courts in serious matters. This is why legal representation in these matters is a right defined by the Charter of Rights and Freedoms and reinforced by our national justice system.

In 2003, the Canadian Bar Association reiterated what the Manitoba Association of Women and the Law had stated in 2002:

> When low-income earners do not have the opportunity to obtain legal representation, there are serious consequences. Just as access to legal advice and services can ensure a certain level of personal and economic security, the absence of this assistance can oblige these individuals to rely more heavily on other social services.

I want to close with a quote by the Honourable Beverley McLachlin, Chief Justice of the Supreme Court of Canada, in a *Vancouver Sun* article by Janice Tibbetts in 2002:

> Providing legal aid to low-income Canadians is an essential public service. We need to think of it in the same way we think of health care or education.

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

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

AGRICULTURE AND FORESTRY

FINDINGS IN REPORT ENTITLED "CANADIAN FARMERS AT RISK"—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Oliver calling the attention of the Senate to the findings contained in the report of the Standing Senate Committee on Agriculture and Forestry entitled *Canadian Farmers at Risk*, tabled in the Senate on June 13, 2002, during the First Session of the Thirty-seventh Parliament. —(*Honourable Senator Stratton*).

Hon. Terry Stratton: Honourable senators, I am pleased to speak to this inquiry based upon a report of the Standing Senate Committee on Agriculture and Forestry entitled "Canadian Farmers at Risk," which was tabled in the Senate on June 13, 2002. In speaking to this report, I would like to acknowledge the important work done by Senator Gustafson, Chair of the Agriculture Committee when this report was issued. His work in this place is a testament to how influential and effective the Senate and individual senators can be. We are especially privileged to have Senator Gustafson among us because he works in such a diligent, tireless and unselfish manner on behalf of Canada's farming community, of which he is a part. It is this community that, we cannot forget, is so crucial to Canada's economic and social well-being. After all, Canada's agriculture and agri-food system accounts for some 8.3 per cent of our gross domestic product and $112 billion in annual retail and food service sales. Furthermore, our agri-food system currently contributes between $7 billion and $8 billion to Canada's trade balance, representing about 10 per cent of the total Canadian trade surplus.

As the world's third largest agri-food exporter, Canada's agri-food system and the farmers who contribute to it benefit immeasurably from the important work of legislators and decision-makers such as the honourable senator from Saskatchewan, people who have hands-on experience with the subject matter that they discuss, analyze and legislate upon.

With respect to the report "Canadian Farmers at Risk," I would like to focus on one of the many underlying themes of the report that I think is especially important to understand: the relationship between those factors that influence farm incomes and the health of Canada's rural economy. The "Canadian Farmers at Risk" report points out that:

> Rural Canada is the heart of our country. This is not simply an emotional attachment. Rural Canada contributes significantly to our economy. It generates 15 per cent of our gross domestic product and 40 per cent of Canadian exports.

Another fact is that farmers comprise a key component of rural Canada, making positive social and economic contributions to rural Canada beyond their primary purpose of food production. The committee hearings that went into the production of the "Canadian Farmers at Risk" report heard from numerous witnesses who underscored how the viability of many rural communities is related to the health of the agricultural industry.

As the committee report asserts, with an industry as large as Canada's agri-food industry, the reality is that at the level of rural municipalities and their surrounding areas, the majority of residents still engage in agricultural pursuits or their work is directly related to agriculture. As well, most of our towns and villages rely on the agricultural community as their key customer base.

• (1740)

Yet, as many of us are aware, rural Canada is undergoing rapid change. This change has been driven by many factors, including the changing nature of the economy, the globalization of markets, the decline of certain resource industries, the rapid growth of major cities — which has been accompanied by a long-term trend of rural depopulation — and the impact of new technologies.

All of these factors and trends are playing a role in shaping the future face of rural Canada, yet it need not be a foregone conclusion that the future of rural Canada must be a gloomy one. For instance, one has just to review the findings of a recent Ipsos-Reid poll which concluded that two-thirds of Canadian farmers remain confident about their economic future, and say on-farm income is sufficient to make a living. The poll also found that 60 per cent of farmers continue to farm because it is a good way of life.

As well, many of the conditions that have given new opportunities for Canadians in urban areas also apply to those who live in rural Canada. For instance, new technologies make it possible to overcome geographic barriers to commerce. Indeed, some would argue that herein lies the potential for value-added enterprises and opportunities in areas of our country that have historically been more noted for primary production than resource extraction.

It also cannot be forgotten that rural Canada's economy is becoming more diversified. It is a fact, which is borne out by government statistics, that rural Canada's economy has gradually become more diversified and more like that of urban centres. Although natural resource industries like forestry, fishing, trapping, mining and energy provide fewer jobs than they used to, rural Canada has benefited from the creation of new jobs in manufacturing, trade, finance, communication, business, personal services, tourism and transportation.

Nonetheless, despite these trends, the fact is that natural resources, and especially agri-food production, are a dominant part of rural Canada's economic landscape. In focusing on this reality, "Canadian Farmers at Risk" is most useful in addressing the most pressing issues related to rural Canada and the health of Canada's agri-food system as a whole. With this discussion of the importance of farmers to Canada's rural economy, "Canadian Farmers at Risk" chronicled the obstacles that have been weighing heavily on this sector of the economy. To quote the report:

> Canadian farmers are facing a wide variety of stresses, including declining farm incomes due to rising costs and lower prices for farm products, unparalleled subsidies given by foreign governments, changing consumer preferences, climatic changes, increased food safety and environmental requirements, insufficient competition in key agricultural markets, corporate consolidation in packer, wholesale, and grocery retail markets, and limited support from governments.

Forced to face these powerful trends, a heavy toll has been extracted from Canadian farmers. For instance, the "Canadian Farmers at Risk" report points out that, between 1999 and 2001, the number of full-time farmers in Canada decreased by 26 per cent, the largest decline in 35 years. As well, the average age of full-time farmers has increased to 57. Finally, young people are less likely to be taking over their family farms, further exacerbating the problems of a decreasing and aging farm population.

Added to these statistics and trends are other realities, such as the fact that, since 1993, over 4,000 farms have declared bankruptcy. Since 1996, Canada has lost over 30,000 farmers, a drop of 11 per cent country-wide.

These statistics and trends do not lie, honourable senators. On the contrary, they tell a compelling story about what it has been like to be a farmer over the last 10 years in Canada — at a time of rapid change. Thrown into this mix is the role played by governments and agricultural policy-makers. Have governments and agricultural policy-makers been making a contribution that is a positive one in this time of great upheaval? I am sure intentions have been good, but results are another matter entirely.

On this front, it is interesting to point out that the "Canadian Farmers at Risk" report adopted as one of its key premises the view that:

> ...in the past, changes to Canadian agricultural policy and levels of support have been crisis-driven — not vision-driven — with the result that policy changes have not always been farmer-focussed, putting Canadian farmers at risk.

In other words, in the face of some pretty daunting obstacles and brutal trends, the role played by governments in helping farmers adapt to changing conditions has not always been a positive one.

To illustrate the point, reduced and unreliable federal income support measures come to mind. For instance, as Mr. Wayne Motheral, President of the Association of Manitoba Municipalities points out in the "Canadian Farmers at Risk" report:

> Between the years 1991-92 and 1998-99, the federal government has taken away approximately $2 billion annually in support payments from the agricultural sector in Western Canada through the removal of the Crow rate subsidy, reducing safety net programmes, and reducing the amount spent on research and development.

This reduced support can be illustrated in other terms which are just as stark and problematic. For example, poor income support programs forced Canadian farmers to incur $15 billion in debt since 1993. As well, the federal government has been off-loading its responsibility for agricultural support onto the backs of the provinces. Under the current Liberal regime, the provincial share of agriculture support has grown from 25 per cent to 40 per cent.

Finally, the cost of delivering agricultural assistance in Canada is not borne equally by all provinces, as taxpayers in some provinces pay a higher portion of federal agriculture program costs. For example, the average provincial funding requirement per capita in Saskatchewan is $127 compared to the $15 country-wide average.

Add to these conditions the fact that input, feed, labour and transportation costs have been rising, and a not-so-rosy picture of life on the farm emerges. Throw in production-distorting subsidies from Canada's agricultural competitors, which have a downward pressure on the prices farmers receive, added to the occasional years of prolonged drought and a BSE-related trade ban on beef, and the overall portrait of Canada's agri-food industry, as it relates to the policy approaches and income support measures of government, becomes increasingly complex and cloudy.

This brings us back to the point in "Canadian Farmers at Risk" calling upon the federal government to adopt agricultural policy that is vision-driven, not crisis-driven. In doing so, the report called upon the government to engage in comprehensive reviews of agriculture and agri-food policy every five years; and, most important, to "reverse the decline in support for agriculture in order to facilitate a vibrant farming and agricultural community in rural Canada."

These are important points, honourable senators. They speak not only to the need to adequately fund and develop agriculture and agri-food policy in Canada in a comprehensive manner, but also to do so in an effective manner that is, to quote again from the report, "meaningful for Canadian farmers."

Rather than proceed on an ad hoc basis, the message of "Canadian Farmers at Risk" seems to be for government to get agricultural policy right in the first place in a manner that is legitimized by having a full buy-in from the stakeholders in question — Canada's farmers. On this front, it is interesting to note that in the time since this report was tabled, we have examples of government action which show that this report's policy prescriptions with respect to income support and overall agricultural policy have not exactly been followed.

One example in this regard has been the government's spotty response to income support issues in the face of the bovine spongiform encephalopathy crisis. A second example of where the government is appearing not to have learned from its past mistakes comes in the reaction of farmers to the government's agricultural policy framework, APF.

On this latter point, I would like to quote from Barry Wilson, who is both an astute observer of the ebbs and flows of agriculture policy in this country and also the Ottawa bureau chief for the *Western Producer*. He recently stated:

> I've been covering agriculture for a quarter century, and I've never encountered such unanimity as there is against the APF.... It is universally opposed by the farm lobby.

That is a quote from the *Ottawa Citizen* August 28, 2003.

• (1750)

While it is not my purpose to get a comprehensive critique of the current government's position —

The Hon. the Speaker *pro tempore*: Honourable Senator Stratton, your time to speak has expired. Are you asking for leave to continue?

Senator Stratton: Yes, please.

Hon. Senators: Agreed.

Senator Stratton: I thank honourable senators.

While it is not my purpose to get a comprehensive critique of the current government's agriculture policies, I think it is instructive to point out the shortcomings of these policies to underscore the wisdom contained in the Agriculture Committee's "Canadian Farmers at Risk" report. It is on this latter issue where the report seems to highlight the need for governments to listen to those in farming and act on their advice so that agri-food producers could have the tools to meet the evolving conditions and demands of their industry. Only by having government decision-makers and legislators engaged in such a fashion can farmers be effectively supported in the all-important task of continuing the proud tradition of building the rural economy and rural character of our country.

On motion of Senator Gustafson, debate adjourned.

SERVICES AVAILABLE TO HEARING IMPAIRED USERS OF PUBLIC TRANSPORT

INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the difficulties faced by the deaf and hearing impaired in availing themselves impartially and in full equality of the information and safety procedures available to Canadians at airports, on aircraft, in ships and on all forms of public transport.—(*Honourable Senator LaPierre*).

Hon. Laurier L. LaPierre: Honourable senators, this is the fifteenth day for Senator Gauthier's very fine inquiry. He reminded us that there are 3 million hearing impaired persons in Canada, including himself. There are 28 million of them in the United States.

He also went on to say:

> If you are deaf, you have no way of knowing where to go unless a friendly person directs you or helps you. When you get on the plane, there are absolutely no instructions given for people who are hard of hearing or have hearing difficulties — absolutely none. Yet, when they show a film during the flight, the commercial advertising — wine, for example — was captioned. I could read on the commercial advertisement what the people were saying, but they did not use captioning for security notices. I asked them why. The answer was simple, "The screen is too small." I asked the lady, "Why can you sell wine on the small screen but not get safety security instructions on the same screen? That does not make any sense." She said, "That is what I have been told." I said, "Well, we will change that."

Consequently this is what this inquiry is all about.

The last quote I want to use from the Honourable Senator Gauthier is this one:

> Airlines say that if there is a demand for a special service, they will provide it. However, people are shy. Generally speaking, when one is deaf, one is a little nervous. There are communication problems. Moreover, if people are not aware of the availability of the service, they cannot ask for it. I have also noticed that some of the hearing impaired are embarrassed by their condition. That is not my case.

He went on to explain how he acquired his deafness.

What the senator is trying to tell us is very simple, honourable senators. It is that every individual, regardless of whether he has an impairment, is a person with fundamental rights. Those fundamental rights are sacred to that person, and no one can interfere with the living of those rights. These rights are in the Canadian Constitution. They are in the Canadian Charter of Rights and Freedoms, the most beautiful document on the planet. They are in the Universal Declaration of Human Rights and other documents of such kind.

However, it seems to me that if we have those rights, we must have the instruments to live them. I walk. I talk. I wave my hands. I am emotional. I am everything that everyone says that I am. I do not seem to be impaired in any way except sometimes in my mind, which I am prepared to admit. However, it seems to me that if you are blind, you need the assistance that you need in order to live as a blind person. If you are deaf, you need to have the instruments that you need to live as a deaf person. You need signs that you can read. You need ways of being able to receive instructions. You need to have people who assist you and communicate with you.

When I was a famous person — three centuries ago — we did a program on what we used to call an insane asylum in a little town in Ontario. We were doing a program on a man who had a fixation that paying taxes was against God's law. Consequently, he refused to pay taxes. He was not really insane — he was just momentarily deprived of some capacity to reason properly. They took him and put him into the insane asylum, as we used to call them. We interviewed his sister, and then we were able to get into the asylum. We hid a camera in a picnic basket, and we planted microphones in someone's wooden leg in order to catch the sounds and sayings of this man. To our amazement, we did what we had to do.

What was more amazing was that we discovered that this place also housed deaf people — deaf people who were judged to be insane and therefore were treated as insane people. I have read since then that in other provinces the same thing happened to highly handicapped people. They were declared to be insane and were relegated to insane asylums. This happened in my province of Quebec. Honourable senators will remember the famous affair of the Duplessis children. I need not go any further to demonstrate the grave injustice of that affair.

Senator Gauthier has found another injustice to a group of people who are impaired. We have not put them in insane asylums, thank God; however, we have to give them the instruments that they need in order to live their lives as fully as possible and to exercise their right of mobility and transportability the way they wish and the way that others are blessed with and are equipped to do. I wish to thank Senator Gauthier once again for awakening us to a very grave human problem that we have to resolve now.

[*Translation*]

The Hon. the Speaker *pro tempore***:** If no other honourable senator wishes to speak, this inquiry is considered debated. Honourable senators, it is now six o'clock.

• (1800)

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with your consent, I suggest that we not see the clock.

[*English*]

Hon. Peter A. Stollery: Honourable senators, I certainly would not want to hold up proceedings, but I would remind honourable senators that we have committee meetings schedules and witnesses waiting. It would be fine for five minutes. Thank you.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I believe we are concluding. We could agree not to see the clock, not to suspend the sitting, but to allow the committees to sit. We will see how it goes.

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, not to see the clock?

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Senator Robichaud: Honourable senators, I move that the Senate do now adjourn.

The Senate adjourned until Wednesday, October 8, 2003 at 1:30 p.m.

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