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OFFICIAL REPORT
(HANSARD)

Wednesday, October 8, 2003

THE HONOURABLE LUCIE PÉPIN
SPEAKER *PRO TEMPORE*

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THE SENATE

Wednesday, October 8, 2003

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

Prayers.

SENATORS' STATEMENTS

WOMEN'S HISTORY MONTH

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the month of October is Women's History Month. This year's theme is: "What do you mean, women couldn't vote?"

[*Translation*]

As all good senators already know, October 18 is Person's Day. It also marks the day on which the Senate became instrumental in the full recognition of women's legal rights in Canada.

[*English*]

Women have made great strides in the public arena since they were granted the vote. Canada has since become a model for other societies as a place that recognizes the rights and freedoms of women as inherent and inalienable. The fact that every citizen in our country takes for granted the equality of women — that this has become a natural assumption for Canadians — is evidence of how far our values have progressed within the broader context of women's history around the world.

[*Translation*]

Still today, the Senate is playing a lead role as far as female members are concerned. In the other place, only 21 per cent of seats are held by women, whereas here in the Senate 36 per cent of distinguished senators are women.

[*English*]

Among all our political parties, there are still many impediments for women who would like to become public representatives. All of these parties recognize the importance of increasing the participation of women as candidates. Our national values compel us to respect — even welcome — the voices of women not only in our courts and legislatures, but on every street and in every household in the nation.

Women can be proud of their past efforts to gain full equality because these efforts have subsequently confirmed the universal rights of all people. We have learned that what we once thought of as important divisions are in reality insignificant and that peace and prosperity only result when societies are inclusive of all their members.

Honourable senators, Women's History Month is an opportune time to reflect on ways we can better include women in shaping the future of our public policy. We will know we have been successful the day we no longer measure the percentage of women in any arena and just take their presence for granted.

THE LATE ISRAEL H. ASPER, O.C.

TRIBUTES

Hon. Terry Stratton: Honourable senators, I rise today to pay tribute to a man of vision, Israel Asper. First, to his family, we offer our deepest heartfelt condolences. Our thoughts are with them at this time.

I returned late from lunch yesterday and entered the chamber just as Senator Carstairs was paying tribute to the passing of Izzy. I was, needless to say, shocked to hear of his passing. We are still, I think, stunned and in denial. It just cannot be that he is gone. Sadly, it is true: The indestructible Izzy is gone.

Winnipeg is in deep mourning at the passing of this truly great man. He cannot be replaced. He was indeed a true original. His vision will go on, carried on by his family. We are all, particularly in Winnipeg, grateful for that vision and will reap the benefits in the years to come. Above all, Izzy was all about giving back to the community, his country and, indeed, the world. For that, we owe him a debt of undying gratitude.

God bless you, Izzy. We will miss you.

[*Later*]

Hon. Joyce Fairbairn: Honourable senators, I did not want today to pass without saying a word in memory of Izzy Asper. There has been so much said across the country, in the media and in this chamber about the many qualities of Mr. Asper, of his astounding advances and adventures in the world of business, journalism, communications, high finance and politics.

I have known Mr. Asper since I was a young journalist in the 1960s and through all the years following. When our leader mentioned to me, upon coming into the house yesterday, that Izzy had passed away suddenly, the two things that came to my mind were his laughter and his kindness, things that do not always come up in the stories and recollections about this very fine gentleman.

What he did for his city of Winnipeg is beyond description. His efforts to insert a sense of immediacy, pride and aggressive enthusiasm into every part of Western Canada will be greatly missed.

Mr. Asper was also one of the most wonderful spouses and fathers that one could imagine. We will all miss him.

[*Translation*]

THE HONOURABLE MARCEL PRUD'HOMME

CONGRATULATIONS ON RECEIVING LEBANESE SYRIAN CANADIAN ASSOCIATION AWARD

Hon. Lise Bacon: Honourable senators, it is with great pleasure and sincere friendship that I want to pay tribute today to the Honourable Marcel Prud'homme, who has just been honoured by the Lebanese Syrian Canadian Association.

Last Sunday, our honourable colleague was awarded the association's 2003 Lifetime Achievement Award during a reception at the Château Vaudreuil. There are two good reasons for this award: Senator Prud'homme's long and productive political career, and the profound and sincere friendship he enjoys with the Syrian and Lebanese communities in Canada.

I must admit that I have known Marcel Prud'homme for a long time. I know I would not be wrong to describe our colleague as passionate, full of energy and remarkably determined.

He defends the causes he believes in with total conviction and without hesitation, even though some may scoff. But Marcel Prud'homme is one of those people who stay the course and finish what they begin, no matter what the cost.

He was only 30 years old when he was first elected to the House of Commons, after distinguishing himself as a student activist. Before that election, he also held positions of responsibility with the youth wing of the Liberal Party.

Successful in a by-election in 1964, he was regularly re-elected as the member for Saint-Denis from 1965 to 1988. That is an enviable political record, you will agree.

In 1993, Prime Minister Mulroney invited him to take a Senate seat. Marcel Prud'homme agreed to continue his work in Parliament from the vantage point of the upper chamber, because he believes firmly in the bicameral nature of our Parliament and in the sober second thought for which our chamber is known.

During his long career, Senator Prud'homme has always shown a particular interest in questions related to defence, security and foreign affairs. He has also travelled widely and has played an active role in parliamentary associations.

I want to offer my sincere congratulations to Senator Prud'homme for this award, which he fully deserves. I also invite my honourable colleagues to join with me in paying tribute to him and recognizing his commitment.

[*English*]

Hon. Gerry St. Germain: Honourable senators, I also wish to pay tribute to my colleague, who sits here as an independent, appointed by the Right Honourable Brian Mulroney. I can assure every senator in this place that sitting next to this man is a true inspiration of what a parliamentarian should be. He is on all sides of every issue, but when he does make up his mind he is generally on the right side. He has helped many of us as young parliamentarians. When I came to the other place, he was sitting across the way from me, but he never hesitated in sharing his experiences and offering guidance.

[*Translation*]

Not bad for a Metis. The work of my colleague Marcel Prud'homme is remarkable. I would like to congratulate him and express my good wishes to him.

• (1340)

MR. JEAN PEDNAULT

Hon. Pierrette Ringuette: Honourable senators, I want to mark the 15-year transplant anniversary of a personal friend and individual who is well-loved and respected throughout the Madawaska area. On October 17, our favourite journalist, Jean Pednault, will celebrate the fifteenth anniversary of his heart transplant in Ottawa. Fifteen years ago, many people were praying for our friend as he waited for his new heart.

As the saying goes: one man's joy is another man's sorrow. A 24-year-old Toronto man lost his life in an accident, but gave life back to our friend in a true scientific and medical miracle. I want to take this opportunity to encourage all Canadians to sign their donor card.

Our brave Jean Pednault, a native of beautiful Quebec City, has been a proud Madawaskan and a Brayon by choice for the past 34 years. Being a journalist has allowed him to get to know and understand the locals and their daily lives, which have been the subject of his numerous articles and editorials. He has always shown great interest in the political issues of all parties and levels of government, without revealing his own preferences. As a Liberal, I consider him to be a Liberal too, although others say he is apolitical. One thing is certain: this journalist has always known the difference between politics and pure and simple partisanship.

In closing, I want to join Jean, who is in Ottawa today for his annual medical checkup, his wife Ruth, his children, grandchildren and all the inhabitants of the Madawaska, in celebrating the fifteenth anniversary of his heart transplant. I wish him many more years with those he loves with all his heart.

INTERNATIONAL DAY OF OLDER PERSONS

Hon. Marisa Ferretti Barth: Honourable senators, last Wednesday was International Day of Older Persons. This day, currently celebrated worldwide on October 1, fosters international public awareness of the important social role of seniors and the benefits of intergenerational respect and support.

By designating a special day for seniors, we not only recognize their contribution to society, but also draw special attention to aging.

There are many reasons to celebrate this day. It is first and foremost an opportunity to raise public awareness of the important and meaningful role seniors play in our lives and in society.

They are our living memory and, through their stories and experiences, they help us to discover our history and realize how far Canada has come over the centuries. This helps us greatly to prepare for the future.

Honourable senators, the golden years and lack of activity are not synonymous. Quite the contrary. Many seniors remain very active after retirement and accomplish great things.

Many care for a relative, the elderly or the sick. They also develop a privileged relationship with the young, a relationship based on patience and indulgence, which is often of great help to the children's parents. In fact, seniors are the most extensively involved in volunteer work on an everyday basis.

However, growing old brings its share of inconveniences. While the quality of life and health of seniors have considerably improved in recent years, many seniors are struggling with serious health problems and experiencing loneliness, isolation or extreme poverty. This day is an opportunity to raise awareness of this situation, to ensure that these persons are not forgotten.

• (1350)

ROUTINE PROCEEDINGS

PUBLIC SAFETY 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-17, An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Bill read 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.

[Senator Ferretti Barth]

[*English*]

OFFICIAL LANGUAGES

STUDY OF FRENCH-LANGUAGE BROADCASTING IN FRANCOPHONE MINORITY COMMUNITIES— NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT

Hon. Rose-Marie Losier-Cool: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That, notwithstanding the Order of the Senate adopted on April 29, 2003, the date for the final report by the Standing Senate Committee on Official Languages in its study of provision of and access to French-language broadcasting in francophone minority communities be extended from October 22, 2003, to December 12, 2003.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

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

Hon. Marjory LeBreton: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, October 22, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[*Translation*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FOLLOW-UP PROCEDURE TO PETITIONS

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 9, 2003, I will move:

> That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to study and report on, before November 28, 2003, the procedure that the Senate should adopt for following up on petitions tabled in the Senate Chamber.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY SECTION 16 OF CONSTITUTION ACT, 1867

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 9, 2003, I will move:

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to study and report on, before November 28, 2003, the scope of section 16 of the Constitution Act, 1867, which designates Ottawa as the seat of Government of Canada.

[*English*]

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 table petitions signed by another 2,000 people requesting that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that the Parliament of Canada consider the following:

> That the Canadian Constitution provide 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 a seat of the 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, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and is characteristic of the very nature of our country.
>
> Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the Constitution Acts from 1867 to 1982.

QUESTION PERIOD

SOLICITOR GENERAL

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—INVOLVEMENT OF SECURITY INTELLIGENCE SERVICES

Hon. Consiglio Di Nino: Honourable senators, my question is for the Leader of the Government in the Senate. I wish to return to the Maher Arar case. As we know, the Solicitor General has ruled out an investigation of the RCMP's role in this fiasco, even though Mr. Gar Pardy, a well-respected senior foreign affairs official, stated that U.S. officials, including Secretary of State Colin Powell, have suggested that the Americans got information from a security source from Canada. To add to that, it was reported in *The Globe and Mail* today that perhaps Ottawa is resisting an inquiry into the Arar case because it knows its own backyard is far from clean.

Former Liberal cabinet minister Diane Marleau said that the Mounties might be lying to Mr. Easter. She said: "This case smells bad." Could the minister tell us why the Solicitor General is blocking an investigation into this affair?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I indicated yesterday and I will indicate again today: We are dealing with an operational matter of the RCMP and I will not comment further.

Senator Di Nino: Honourable senators, this case certainly casts a dark shadow over our security and police institutions. The question that we should be asking ourselves is this: Should we not know if any of our security intelligence services, whether it be the Canadian Security Intelligence Service, CSIS, the Communications Security Establishment or other security and intelligence entities, have provided any information on this matter? Is this not something that Parliament and, indeed, the people of this country are entitled to receive? If so, would the government leader not agree that an investigation would be salutary, useful and good in clearing up some of this mess?

Senator Carstairs: As the honourable senator knows, there are review mechanisms both with the RCMP and with CSIS. Those review measures have been put in place by Parliament. Those bodies will ensure that our forces, whether they be security forces or police forces, are performing their jobs appropriately.

Senator Di Nino: Would the minister agree that we should recommend that the Canadian Intelligence Review Committee should be asked to get involved in this matter?

Senator Carstairs: The review committee of CSIS is involved on an ongoing basis in ensuring that this agency carries out its responsibilities appropriately.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators will recall that when Parliament, including this house, adopted the legislation that set in place the Canadian Security Intelligence Review Committee, a very select group of Canadians formed the committee. Indeed, they were all sworn in as members of the Privy Council for a number of reasons, including that they would come under the Official Secrets Act. In that legislation as well, honourable senators will recall that Parliament set up the Canadian Security Intelligence Review Committee because Parliament had given to CSIS powers that abrogate the human rights of Canadians.

We are in the public forum in this instance, and there is a question as to whether the rights of a Canadian citizen have been abridged with the collaboration of officials of Canada. Therefore, rather than being passive as far as the responsibilities of the Canadian Security Intelligence Review Committee are concerned, will the government not make a request of that committee to look at whether the rights of Mr. Arar were infringed by CSIS in an inappropriate way?

Senator Carstairs: Honourable senators, the review committee, which is made up of distinguished persons from across this country, including a former premier of the Province of Manitoba, will conduct their affairs as they see appropriate.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, what is the difference between making public the fact that former Prime Minister Mulroney was being investigated by the Royal Canadian Mounted Police — and the publicity around that investigation was not discouraged by the government — and not admitting or denying that an investigation of the same type, an operational one, may or may not be taking place in the case that Senator Di Nino raised?

• (1400)

Senator Carstairs: Honourable senators, it is not appropriate for the Government of Canada to discourage or encourage the activities of the RCMP.

Senator Lynch-Staunton: Why is it in the interests of the Liberal Party to gloat over an investigation that led nowhere and for which it has yet to apologize and yet refuse to answer that this more important investigation may or may not be taking place?

Senator Carstairs: The honourable senator cannot find any instance in which a member of the cabinet took any pleasure out of what was happening to the former Right Honourable Prime Minister, certainly not from me.

Senator Lynch-Staunton: Honourable senators, I refer the Leader of the Government to the transcript of the press conference that was given jointly with the RCMP and Messrs. Herb Gray and Allan Rock, who were in the cabinet at that time, at which they agreed to a settlement with Mr. Mulroney. At the same time, however, Mr. Rock — and I will be careful in my interpretation of his expression — said, without sadness, that the RCMP investigation was ongoing.

Senator Carstairs: The interpretation of the honourable senator that the investigation was ongoing I do not think in any way would have indicated that anyone took pleasure in the fact that such an investigation was going on.

Senator Lynch-Staunton: Pleasure or not, the point is that, at the time, the government admitted loudly that an RCMP investigation was going on — an investigation of an operational nature. In this case, is a similar investigation of an operational nature going on? Why admit in one case and not admit or deny in the other?

Senator Carstairs: I indicated at the beginning of this questioning that I would not comment on the RCMP operational policies and matters, and I will not.

HEALTH

REPORT OF NATIONAL ADVISORY COMMITTEE ON SARS AND PUBLIC HEALTH

Hon. Wilbert J. Keon: Honourable senators, my question is for the Leader of the Government in the Senate. Yesterday, the National Advisory Committee on SARS and Public Health, headed by Dr. David Naylor, released a report entitled "Learning from SARS." It had harsh words for the way in which the crisis was handled, saying that it was marked by a lack of leadership or collaboration between federal and provincial health authorities, and a lack of funding and manpower due to cuts in the area of public health care.

The report states that Health Canada was "largely invisible on the front lines." The most serious assertion the report makes is that despite all that has happened, Canada remains unprepared for another outbreak. What steps will the federal government now take in working with its provincial and territorial partners to ensure a more efficient and timely response to future national public health emergencies?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Honourable Anne McLellan, the Minister of Health, has indicated that it is essential that action be taken quickly on Dr. Naylor's report. She has accepted the recommendations. Clearly, all levels of government will want to study them in more detail.

There is now an attitude at both the federal and provincial level — and hopefully at all provincial levels — that we cannot allow another lack of communication as identified by Dr. Naylor.

NATIONAL PUBLIC HEALTH EMERGENCIES— RECOMMENDATIONS OF EARLIER REPORT

Hon. Wilbert J. Keon: Honourable senators, Dr. Naylor stated that most of the recommendations made in the report were actually made in a federally commissioned report almost 10 years ago. The Lac Tremblant declaration of 1994 advised speeding up the transfer of information between federal and provincial health authorities, improving disease surveillance, setting priorities and how to prepare for new threats, improving public health communications in a crisis, and forming partnerships between governments and public health agencies. Could the Leader of the Government in the Senate tell us why the recommendations of this earlier report were never implemented?

Hon. Sharon Carstairs (Leader of the Government): I think it was for the very simple reason that no one thought there was an urgency to this matter. Now that we have experienced a SARS outbreak, which I think brought everyone to attention about the state of public health in this country, there will be the appropriate responses.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

Hon. Michael A. Meighen: Honourable senators, I am sure you were all as gratified as I was to learn that the Prime Minister has decided to review the decision that arbitrarily left 23,000 war veterans' widows without lifetime coverage under the Veterans Independence Program. According to press reports, a senior government official has confirmed that relief may soon be in sight for those widows who are now barred from the program. They were barred for no reason other than the fact that they were not in receipt of such benefits at the time the decision was made to offer lifetime extensions.

Those who were in receipt of such benefits under the old one-year program were the only ones who qualified for the lifetime extension. A decision was made in May of this year whereby if one widow's benefits under the old program ran out in April while another one ran out in June, the latter qualified for benefits while the former did not.

My question is to the Leader of the Government in the Senate, who seemed quite receptive when I raised this matter the first time and whose eloquence no doubt caused the change of heart in government circles. Can she tell us when "soon" is? Can she provide us with a date when those excluded widows might expect some relief? Failing that, can she explain why the government is so reluctant to set a date?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the amount of money involved is much more than was originally considered, but I can confirm for the honourable senator that an active review is ongoing.

While I am on my feet, and in response to a question the honourable senator asked last week with respect to wreaths, I am informed that each senator's office will be contacted. Should senators wish a wreath to place before a cenotaph in their home community, one will be made available to them.

Senator Meighen: I thank the honourable leader for that information.

Honourable senators, I noticed that the Leader of the Government in the Senate was unable to answer my question as to when "soon" would be. I trust she will advise us at the earliest opportunity, hopefully before this place is no longer sitting.

THE ENVIRONMENT

REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Hon. W. David Angus: Honourable senators, for the second time in two years I raise an issue on the report of the Commissioner of the Environment and Sustainable Development. In her report this week, Johanne Gélinas, Canada's Commissioner of the Environment and Sustainable Development, expressed concern about the glaring gap between the federal government's commitments to the environment and its actual performance on the subject. In fact, she used a special term for this government's record on the environment, stating that the government has an environmental deficit. She said:

> Good intentions are not enough. Making commitments to the environment and sustainable development is important. It's even more important to meet those commitments...

Would the Leader of the Government in the Senate please tell us what the government plans to do about this environmental deficit?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, one of the things that the government has done, something in which we take great pride, is to have signed the Kyoto Protocol and to put into place a plan whereby Canada can meet those targets. There have also been specific contributions. For example, $7 million of new funds over the next five years have been dedicated to a nationally coordinated departmental science program to improve our understanding of the environmental presence. The last budget began to make substantial contributions to the environment.

Is it enough to meet all the desires of the commissioner? No, and that is good because she will continue to keep our nose to the wheel, so to speak, and ensure that we are more receptive to her reports.

HEALTH

REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT— PESTICIDE REVIEW REGIME

Hon. W. David Angus: Honourable senators, I would like to follow up on a particularly serious matter concerning the weaknesses, as the commissioner called them, in the government's management of pesticides.

• (1410)

Even though this is the fourth time since 1998 that the commissioner has raised the issue of these weaknesses in the federal pesticides management regime, she was perturbed that the government still cannot ensure that the older pesticides we use in this country are safe. Could the Leader of the Government in the Senate please explain why this is case?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, unfortunately the problem with many of the pesticides is that they were not subject to testing prior to 1994. That testing has gradually been taking place. There is no point denying that we have been and are still slow in our examination of some of these pesticides. The commissioner has taken us to task on just that. Legislation passed in 2002 did provide for more staffing for that particular regulatory agency. I hope that when she next reports, there will be a positive note that we are making more progress than we have made up this point.

Senator Angus: Honourable senators, the issue of information management on pesticides was also raised several times in the commissioner's chapter on pesticides. For instance, in 1994, the government promised to set up a database on pesticide use to support better targeting of research, monitoring and compliance activities. To date, alas, the database is not yet in place. Does the Leader of the Government in the Senate have any information on when or whether this database will be put in place?

Senator Carstairs: My information is that the monies that were afforded in the last budget and the passage of the act will make it possible for that database to be up and running. Exactly when that will happen, I do not know but, hopefully, it will be sooner rather than later.

NATIONAL DEFENCE

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

Hon. J. Michael Forrestall: Honourable senators, yesterday, the Leader of the Government, in response to some questions I was asking about vehicles being used in Afghanistan by Canadian Forces, indicated to me, at page 2021:

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

Consider this in light of the resignation of General Cameron Ross, the Director General of Peacekeeping, over Canada's planned mission to Afghanistan and over other related questions having to do with safety and adequacy of equipment; the fact that our American allies told us not to go with inadequate equipment; the fact that these vehicles are about to be replaced with God only knows what; and the fact that now the Government of Canada, we are told, has instructed its troops not to use the light utility vehicle both inside and outside certain lines of demarcation in that country.

I pose my question again to the Leader of the Government against the background of the Minister of National Defence's clear undertaking that he would step aside if the equipment sent for Canadian troops was less than adequate. Has the Minister of National Defence yet tendered his resignation, or has he discussed the matter with the Prime Minister?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, he has not tendered his resignation, nor should he have tendered his resignation. As you know, decisions on how the operation is conducted are made by the officers in the field. They have at their disposal a number of options. When they took into consideration yesterday that apparently this may have been a terrorist attack — they have not come to that conclusion, but they think that may have been the case — they started taking different precautions than they were taking earlier. We must put our faith and confidence in the officers in charge of the Kabul mission because they, and more importantly the troops, are doing an excellent job.

AFGHANISTAN—DEATH OF TWO SOLDIERS—ATTENDANCE OF MINISTER AND CHIEF OF THE DEFENCE STAFF AT FUNERAL

Hon. J. Michael Forrestall: Honourable senators, can the minister indicate whether or not this whole question has anything to do with the most regrettable, and I think unprecedented, situation where the senior military officers directly involved requested the Chief of the Defence Staff and the Minister of National Defence not to appear at yesterday's services?

Hon. Sharon Carstairs (Leader of the Government): Absolutely not. As honourable senators know, the Prime Minister of Canada and the Minister of Defence were in Petawawa when the two soldiers were returned to Canada and given full military honours. The decision for the Defence Minister and, indeed, the Chief of the Defence Staff not to attend the funeral yesterday was a result of the request that this be a family and community event. They did not want to turn it into a media event; they wanted it to be a family event. The Minister of Defence respected that request and did not attend.

AFGHANISTAN—DEATH OF TWO SOLDIERS—SUITABILITY OF UNARMOURED VEHICLES

Hon. Gerry St. Germain: My question is also to the Leader of the Government, and it relates to the same issue. Apparently, the vehicles in which the two military personnel lost their lives, called the Iltis, will be replaced, according to Minister of National Defence, by a Mercedes vehicle. The fact is that the minister clearly stated that the vehicles being used were inadequate and that they were immediately pulling them out of service. I actually watched them on television making reference to this. Why would a minister send personnel in harm's way in inadequate vehicles? My understanding is the Mercedes vehicle will not be much better.

Hon. Sharon Carstairs (Leader of the Government): At no time did the Minister of Defence say that this was an inadequate vehicle.

Senator St. Germain: He certainly made the inference that the vehicle was inadequate under the circumstances; yet, our Armed Forces personnel are being requested to place themselves in harm's way. Senator Forrestall has clearly questioned the minister on this. I hate to think this, but I honestly do believe that there is a connection between that and the fact that the Minister of National Defence and the Chief of the Defence Staff were asked not to attend the funerals. I am certain of that. I spent a week with the military, and I know how inadequate the equipment budget is for what these people are being asked to do. I believe that this is the first indication from our military personnel and their families across this country that they have serious concerns. They are telling us, "We will do the job. We have volunteered for the job, but we need the proper equipment to do the job. We are not being properly equipped, and we are being asked to perform duties that unfairly put our lives at risk. "

Senator Carstairs: Honourable senators, Canadian troops are never sent into the field without appropriate equipment. They have appropriate equipment, and they have a variety of different types of equipment. It is up to the officers in command to determine which piece of equipment they will utilize at any particular time.

Senator St. Germain: In the war in Kosovo, honourable senators, our air force had to use the Spanish air force's batteries to start our airplanes. Do not give us the guff and the malarkey that these people are properly equipped. They are not properly equipped. I spent a week in Greenwood, Nova Scotia. The forces there have to hire civilian airplanes because their equipment is inadequate to perform the functions they are expected to carry out. It is shameful.

Senator Carstairs: The honourable senator is wrong.

• (1420)

FUNDS FOR NAVY

Hon. Norman K. Atkins: Honourable senators, my question is to the Leader of the Government in the Senate. The frigate HMCS *Toronto* is scheduled to sail to the Persian Gulf next February. Since September 11, approximately 95 per cent of Canada's sailors have served in the war on terrorism and they are now at the breaking point. They are fatigued and played out. According to reports, the deployments have shown that in addition to staffing problems, there have not been enough spare parts to keep the fleet at sea. The navy has had to scrounge parts from returning ships for those ships going out on deployment.

Could the honourable senator tell the house whether any funds are to be appropriated in the Supplementary Estimates that would be devoted solely to the Canadian navy? Could the leader assure the house that the HMCS *Toronto* will be properly staffed and equipped by next February?

Hon. Sharon Carstairs (Leader of the Government): In respect of specific monies for the Canadian navy, detailed information could be obtained from the National Finance Committee because it is presently undertaking its study of the Estimates.

I can assure the honourable senator that just as troops were not sent to Kabul without being properly equipped, the HMCS *Toronto* will not leave until it is properly equipped.

DEPLOYMENT OF HMCS *TORONTO*—TRANSFER OF EQUIPMENT FROM OTHER FRIGATES

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder whether the honourable leader could make inquiries and report to the house on the HMCS *Toronto's* onboard equipment that was removed from the other 11 frigates? For example, which frigate has lost one of her radar systems to the HMCS *Toronto*? How many of the 50-calibre machine guns on the *Toronto* have always been on the *Toronto?* Of course, the ship's company will come from all the frigates. Could the house have access to a list of the equipment on HMCS *Toronto* that has come from the other 11 frigates to make it seaworthy, operational and fit to carry out its duties in the Persian Gulf?

Hon Sharon Carstairs (Leader of the Government): As the honourable senator is aware, I do not have that information at my fingertips, but I will make appropriate inquiries and obtain it for him.

HEALTH

SUPPLY OF GENERIC DRUGS TO AFRICAN COUNTRIES

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate. In response to a request made by the United Nations Special Envoy for AIDS in Africa, Stephen Lewis, the federal government has announced that it will amend our patent laws to allow generic drug companies to supply low-cost antiviral drugs to African countries. This action is possible because of an agreement reached in August by the World Trade Organization allowing impoverished countries to import generic drugs under specific circumstances. When does the government intend to propose such legislation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is my understanding that the government will bring the proposed legislation forward as quickly possible. I was pleased to read today that there is NAFTA cooperation in this effort.

UNITED NATIONS GLOBAL FUND AGAINST AIDS, TUBERCULOSIS AND MALARIA— GOVERNMENT CONTRIBUTION

Hon. Marjory LeBreton: Honourable senators, Mr. Lewis has again asked Western countries to honour their pledges or increase their contributions to the United Nations Global Fund Against AIDS, Tuberculosis and Malaria. The House of Commons Foreign Affairs Committee has asked the Prime Minister to triple Canada's current contribution of $100 million. Last month, at the United Nations General Assembly special session discussing AIDS, Prime Minister Chrétien seemed to indicate that increased funding would be provided. Could the Leader of the Government in the Senate tell us if the increased AIDS funding mentioned by the Prime Minister will be directed to the global fund and, if so, what is the amount and when will the government do it?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator is correct when she says that Canada has pledged a total of $100 million, but it is important to realize that it is US $100 million and not CAN $100 million that will go to the global fund between 2001 and 2004. Thus, Canada ranks seventh among all donor countries. I understand that the honourable senator is making a plea for additional dollars, and I will certainly put that request forward on her behalf.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table in this house, two delayed responses to two oral questions, one raised by the Honourable Senator Keon on September 23, 2003, concerning Canadian Institutes for Health Research funding program for middle level and senior researchers, and also a response to the oral question raised by the Honourable Senator Tkachuk on June 18, 2003, concerning pensions plans and the difference between public and private-sector surplusage.

HEALTH

CANADIAN INSTITUTES FOR HEALTH RESEARCH— FUNDING PROGRAM FOR MIDDLE LEVEL AND SENIOR RESEARCHERS

(Response to question raised by Hon. Wilbert J. Keon on September 23, 2003.)

Since the creation of the Canadian Institutes of Health Research (CIHR) a number of federal initiatives related to health research have been implemented, such as the Canada Research Chairs program and the Canada Foundation for Innovation.

As a result, CIHR has adjusted its programs to ensure that federal research dollars do not significantly overlap and that CIHR is funding in its niche areas. Thanks to increased investments that have seen CIHR's budget double to $617 million annually, CIHR now funds over 7,500 researchers and trainees through its operating and strategic grants.

FINANCE

PENSION PLANS—DIFFERENCE BETWEEN PUBLIC AND PRIVATE-SECTOR SURPLUSAGE

(Response to question raised by Hon. David Tkachuk on June 18, 2003.)

A proposed regulatory change to pension surplus rules will allow fixed cost-shared pension plans to make joint employer-employee contributions until the amount of pension surplus exceeds 25 per cent.

This change will put fixed cost-shared pension plans on a more equal footing with traditional private sector defined benefit plans. It will also allow for more stability in employee contributions and asset levels for fixed-cost shared plans, as is already permitted for traditional plans under the current surplus rules.

The difference has nothing to do with preventing businesses from "hiding" profits in pension plans. It is a structural change to put fixed cost-shared plans on a more equal footing with traditional plans for the long-term.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like to begin with Item No. 3 under Government Business, that is, third reading of Bill C-6. We will then return to the order proposed in the Order Paper.

[*English*]

SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—DEBATE SUSPENDED

Hon. Jack Austin moved the third reading of Bill C-6, 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, as amended.

He said: Honourable senators, on September 25, 2003, the Senate adopted a motion to refer Bill C-6, in respect of the resolution and negotiation of specific claims, back to the Standing Senate Committee on Aboriginal Peoples for the purpose of studying the impact on Bill C-6 of the recent Supreme Court decision recognizing the Metis people as a distinct Aboriginal Nation.

The committee met on Tuesday, September 30, to hear from Mr. Allan MacDonald, Director of the Office of the Federal Interlocutor for Metis and Non-status Indians. The committee also heard from Ms. Audrey Stewart, Director General, Specific Claims, and Mr. Robert Winogron, Senior Counsel, Department of Indian Affairs and Northern Development. In brief, their evidence was that, legally, the decisions of the Supreme Court of Canada in the *Powley* and in the *Blais* cases are in no way relevant to Bill C-6, which is limited in its scope to specific claims under treaties and agreements by Indian bands as defined in clause 26 of Bill C-6.

The *Powley* and *Blais* decisions are related to the Metis claims for the Aboriginal right to hunt, in the *Powley* case, and for entitlement under resource transfer legislation, in the *Blais* case. *Powley* indicated that one specific Metis community, through the use of its hunting practices, had proven that it had retained an Aboriginal right to hunt. The case went no further. The *Blais* case found that a Metis claim to rights over resources could not be established as an Aboriginal right of that particular Metis community. Both cases were decided on narrow grounds and neither referred to the rights of status Indians.

An additional witness who appeared on October 1 was Professor Larry Chartrand of the Faculty of Law at the University of Ottawa. He is a Metis and specializes in Metis claims. Professor Chartrand acknowledged that he represented no Metis group and that he offered his personal views only. He focused on two points: first, that the Supreme Court was moving closer to the long-held historical view of the Metis that they should be defined as Indians for the purpose of section 91.24 of the Constitution Act, 1867. He believed that this was shown in the Supreme Court's acknowledgment of hunting rights in the *Powley* case. Second, he argued that as a matter of law or of policy, Bill C-6 should be amended to include the Metis so that any land claims under any agreement could be filed, and he had gave one or two examples of possible land claims.

Professor Chartrand based his legal argument on the premise that all Aboriginal communities were entitled to equal treatment. This, in my view, is highly debatable. However, he made good points in arguing that the federal policy toward Aboriginal peoples was unjust and inequitable. I believe that most members of the committee would agree with him on that issue.

• (1430)

On October 2, the committee heard from Mr. Bryan Schwartz, Special Counsel to the Assembly of First Nations. He continued their well-known opposition to Bill C-6 and read into the record a letter from Grand Chief Phil Fontaine, which continued the objection to the lack of formal recognition of the Assembly of First Nations, and the lack of an entitlement to share in the appointment process of tribunal members and others.

Of interest was the comment by Mr. Schwartz in reference to section 35 of the Constitution Act, 1982, that:

> Equality does not require, or even permit in some cases, an identical treatment of different groups. Their distinctive histories, rights, interests and political choices must be taken into account in appropriate ways.

Later in his evidence, Mr. Schwartz said:

> The court has acknowledged, in other words, that First Nations and Metis have, for at least some important purpose, different constitutional histories and positions. In the *Lovelace* case, the Supreme Court of Canada had recognized that the distinctive legal and social position of the First Nations means that a government can design programs in partnership with First Nations that extend to them only and do not necessarily include the Metis.

He further went on to say:

> However, given the long history of justice denied to First Nations in the context of specific claims, First Nations cannot be expected to wait while yet a new process of consultation unfolds.

I should mention that Roger Jones of the Assembly of First Nations also participated with Mr. Schwartz in support of their position.

On Tuesday, October 7, Mr. Peter W. Hutchins, a lawyer with many years of experience with Aboriginal law and issues, gave the committee an overview of federal policies regarding Aboriginal peoples. He also believes that:

> ...the Metis people are not only Aboriginal people within the meaning of section 35 of the Constitution Act, 1982, but there is a special federal responsibility toward them by virtue of section 91.24 of the BNA Act, 1867.

The issue in all of this evidence is whether any reason in law exists which should hinder the right of Parliament to enact Bill C-6. The evidence is clear that Bill C-6 and the rights of the Metis — whatever they are and whenever they may be established — run in separate tracks.

The claims of the Metis are not to be taken as having any impact on the right of Parliament to legislate regarding status Indians. However, the Standing Senate Committee on Aboriginal Peoples takes full note of the unresolved issues regarding the Metis people, and recommends that the Government of Canada deal with those issues — and the *Powley* case — at an early time.

Let me turn back to Bill C-6. The Senate has heard from me on second reading and on debates in amendment. I will not go back over what is now on the record, except to touch again on a few key points.

Government, First Nations, the Indian Claims Commission and many others have viewed the existing specific claims process with increasing concern and the need for reform as an increasing necessity. The fact is, honourable senators, that the lack of an independent body to deal with specific claims has not been the only problem of the present system. Another major obstacle to the resolution of specific claims is that the system is much too slow.

I am sure that all honourable senators have heard that, over the years, the backlog of outstanding specific claims has been growing steadily. Between April 1970 and June 2003, only 252 of 1,201 specific claims submitted have been settled. Currently, there are over 550 claims in various stages of review and more specific claims are being submitted every year. Honourable senators, everyone acknowledges this is an unacceptable state of affairs. It is clear that action is needed and needed now.

Honourable senators, the Standing Senate Committee on Aboriginal Peoples held hearings from April 30 to June 11 of this year. The Assembly of First Nations testified on three occasions. Government officials, First Nation representatives from organizations in communities across the country, the Indian Claims Commission and legal experts also testified.

The committee heard from First Nations witnesses that Bill C-6 does not duplicate every aspect of the draft legislation contained in the joint task force report. That task force studied the specific claims process between 1996 and 1998. The fact that its recommendations were not fully accepted by the Government of Canada was a considerable concern to the Assembly of First Nations.

Other concerns were the absence of a joint appointment process to the commission and the tribunal; the $7-million cap on tribunal compensation awards; and the absence of a joint Canada-Assembly of First Nations review of the legislation at a later time.

The committee also heard from government witnesses of the need for fiscal responsibility when establishing a statutory compensation body such as the tribunal, and of the bill's authorization for the claim limit to be modified by regulation.

I would emphasize that the bill imposes no compensation limit through the commission process and, even more significantly, this bill and its operation is required by statute to be reviewed within three to five years of its taking effect to determine what changes ought to be made.

Honourable senators, I am reducing hours of testimony to its essence, but I would assure you that the committee assessed what it heard carefully and responsibly, and its report reflects that assessment. Honourable senators, at the end of its hearings, the committee was satisfied that Bill C-6 represents an important advance for the fair treatment of specific claims. The bill creates exactly the kind of independent, two-part structure outside the Department of Indian Affairs that was advocated by the Penner committee of 1983, by the Indian Claims Commission and many others. It will provide for finality in the settlement of certain claims.

Claimants who do not wish to be subject to the tribunal's claim limit are not obliged to go to the tribunal. Access to the courts remains open to them.

Honourable senators, another noteworthy aspect that I would mention is that, for the first time, fiduciary obligations are included among the legal obligations that may give rise to a specific claim.

I would add that, throughout its deliberations on Bill C-6, the committee also remained most mindful of concerns raised by First Nation witnesses. As a result, the committee adopted important amendments that improved Bill C-6 in a number of respects. For example, the committee raised the existing claim limit to $10 million. It added a clause to ensure that claimants are given the opportunity to make representations to the minister with respect to appointments to the commission and the tribunal. The committee modified the bill's review clause to ensure that First Nations are entitled to make representations on the act's implementation. The committee also added a clause to ensure that the tribunal can summon witnesses and order the production of documents for claims before the commission.

Honourable senators, these are significant changes that will benefit First Nations with specific claims.

The committee also carefully considered additional points raised during its Bill C-6 hearings. It drew the following conclusions on two issues, and those are that the bill's waiver requirement, and the potential for ongoing delays in the specific claims process were of sufficient importance to merit including observations in the committee's fourth report to this chamber on June 12. I draw the attention of honourable senators to these observations, which ask the minister to pay particular attention to the matters raised in them when the review of the legislation's operation begins three years after the legislation comes into effect.

Honourable senators, it will undoubtedly be clear to you from my remarks that I consider Bill C-6 to be a work-in-progress. It has travelled a long and winding road to its introduction. However, First Nations have had their cause advanced. For the first time, there will be a statutory framework under which they can seek redress from government. This does not mean, honourable senators, that the framework is set in stone. It is just the beginning of a new era in the specific claims process. Improvements will be necessary. Our role as parliamentarians is to ensure that they do occur when the need is demonstrated.

• (1440)

Honourable senators, I feel confident that we will remain observant of the progress of Bill C-6, that we will bear in mind the issues raised in this debate and before the committee, and that we will recognize that the bill, in spite of the formal opposition of the Assembly of First Nations, advances the process of dealing with specific claims.

I ask honourable senators to support the bill.

Hon. Gerry St. Germain: Will the honourable senator accept questions?

Senator Austin: Certainly.

Senator St. Germain: I have two questions. The AFN, which is the representative of our First Nations at the highest level, has posed strong opposition to various factors and they make reference to the joint task force. Why would the government at this stage, when it continually states that it wants to deal openly with Aboriginal issues, ignore this organization that I honestly believe is sincere in requesting proper representation in establishing the commissions, which appear to be merely an extension of DIAND and the ministry at the present time?

Senator Austin: Honourable senators, I believe that Senator St. Germain is correct in observing that the Assembly of First Nations is sincere in its representations. They participated actively in the joint task force — 1996 to 1998 — and much was agreed upon. On behalf of the Assembly of First Nations a friend of mine and of Senator St. Germain, Chief Edward John, headed that joint task force. Chief John is also a lawyer, called to the bar in British Columbia.

After the task force reported, the government had to assess the degree to which it was possible to accept its recommendations. I wish to touch on three aspects. First, the desire of the Assembly of First Nations to be treated in legislation as having a quasi-sovereignty could not be accepted by the Government of Canada. It could not, by legislation, be established as the representative of all First Nation communities, nor were the First Nation communities unanimous or even substantially in agreement that the AFN should play that particular role.

I agree with Senator St. Germain that the Assembly of First Nations does represent a substantial number of Aboriginal communities. However, it does not have the mandate to receive a legislative role from its communities, and it has not had a resolution to that effect passed by the chiefs.

Second, the Assembly of First Nations claimed the right of a negative veto with respect to appointments to the tribunal and to the centre. There is no possibility that the Government of Canada can cede that part of its jurisdiction to any organization, Aboriginal or otherwise, in circumstances of this kind. It is for government to govern and take its responsibilities before the people of the country.

With respect to the cap, the government found itself in a position where it has to control the amount of the awards that the independent tribunal might find. Therefore, it imposed a cap of $7 million, which this Senate wishes to raise to $10 million. The government, however, can waive the cap at any time it wishes and accept a claim for a larger amount.

Honourable senators, I could go on. Senator St. Germain and I have had many discussions on these issues, but I know he has another question and I am eager to hear it.

Senator St. Germain: I thank the honourable senator for his response.

My next question is in regard to the Metis. Why would we not wait? The honourable senator made reference in his intervention that the Metis issue will run on separate tracks. That is very interesting, but some of the claims that may arise from the Metis people may be in conflict by way of overlaps, or what have you, on land settlements, and most of the specific claims relate to land. Why would we not proceed with caution in view of the landmark decision of the Supreme Court of Canada regarding Metis recognition under section 35, which will at least commence serious negotiations between the interlocutor and the Metis nation?

Senator Austin: Honourable senators, I wish to correct an impression. Part of that impression may be in the motion that was raised on September 25.

The *Powley* case did not recognize the Metis as an Aboriginal nation. This Parliament recognized the Metis as an Aboriginal nation in 1982, with section 35. I believe that was one of the most progressive measures this Parliament has taken in many decades.

Second, the First Nations, as represented by their council — and I read the statement into the record — do not want their claims to be either retarded or to be involved in claims by other Aboriginal peoples. It was made very clear that the Inuit are in exactly the same position. They have quite a different deal from the status Indians or from the Metis. I would say that the Inuit are the most advanced in the recognition of their rights and place.

The court dealt with this issue specifically in the *Lovelace* case. The Supreme Court of Canada made it clear that the three Aboriginal groups are to be dealt with in their own history, customs and circumstances.

The situation with respect to the Metis and section 91.24 has concerned me and many people for a very long time. Many decades ago, the Government of Canada made a decision that the Metis were not to be included as Indians under section 91.24, which assigns responsibility for Indians to the federal government under the Constitution. It took litigation to include the Inuit as Indians for the purposes of the Indian Act. The Metis have pursued litigation, but that case has not come forward.

Clearly in the evidence there was total sympathy in the committee for the circumstances in which the Metis find themselves. I believe all of us on the committee, and I hope all honourable senators in this chamber, will keep high on their priority list the pressure on government to deal with the Metis issue. The *Powley* case does advance their cause in that it recognizes the Aboriginal right to hunt in a community that has exercised that right and has never given up that right.

Apart from the *Powley* case, we have another issue and that is to deal justly with the Metis.

• (1450)

Hon. Terry Stratton: Honourable senators, I should like to speak to Bill C-6. Is there another question?

Hon. Charlie Watt: Would Senator Austin be prepared to accept some questions?

Senator Austin: Yes.

Senator Watt: Honourable senators, Senator Austin told us that action is needed now. Indeed, that action is long overdue. However, I am not quite sure whether the instrument that we are dealing with today is adequate for the action that is needed now. It may not be.

Honourable senators, I should like to cover an area that Senator Austin touched upon, namely, the court actions between the federal and provincial governments from 1936 to 1939. That is when the Inuit of the North discovered that they fell under section 91.24. In those days, the Hudson Bay Company was the only instrument in the North, when the Hudson Bay Company inherited a debt of $3,000 respecting relief that was being provided to the people in the North during the period of starvation, litigation ensued between the federal and the provincial governments. That litigation continued during the period between 1936 to 1939. It centred on the question of who had trusteeship responsibility. In 1939, the ruling finally came down. The federal government lost a court action and the provincial government won, due to the fact that the federal government has responsibility for the Inuit people.

There has been some uncertainty on the precise question of who comes under section 91.24. In some cases, the Inuit have been found to come under this section and in some cases it has been decided that they do not. That is obvious from the litigation back to 1970, through to the negotiations up to 1975.

Yesterday, the Standing Senate Committee on Aboriginal Peoples heard from Mr. Peter Hutchins, a knowledgeable witness who specializes in Aboriginal rights. I have known this man since he was a young man and I almost did not recognize him yesterday, because he has become very white. That does not mean he is old, it just shows that he has just been fighting uphill battles over many years in representing Aboriginal people. He is a litigater and a negotiator.

He described how Bill C-6 would infringe on Aboriginal rights. To him, it was quite clear. He believes that the ruling raised the issue of whether or not the Metis also fall under section 91.24. This matter must be rectified.

Why must we rush this bill through when we are at the stage where, perhaps very soon, we will have a new agenda? I fail to understand why we must rush this bill through.

More important, the witnesses we heard all said the same thing. Senator Austin said that action is needed now. Maybe action is needed now, but is this the right instrument that we are providing to the Inuit people? Will it advance the rights of the people? I do not think so. Over and over again, Inuit peoples have told us that this is unworkable. If it is unworkable, why do we not suspend this debate until we have an opportunity to review the entire issue of Aboriginal matters?

Senator Austin was not in attendance yesterday when Mr. Hutchins analyzed Bill C-6 as it relates to section 35 and section 91.24. We have a tendency to deal with the provisions of section 35 in isolation. As Mr. Hutchins described it, the boxes that are being created by the system are getting smaller and smaller.

Why did Senator Austin not deal with Mr. Hutchins' evidence? Perhaps the honourable senator did not have access to transcripts of the meeting. I should like to hear his opinion of what Mr. Hutchins said yesterday.

Senator Austin: Honourable senators, in specific answer, I have studied the transcript. I have read the transcript of Mr. Hutchins' evidence three times. I quoted from him, and I think I made an honest representation of the key point that he gave the committee.

For the rest, obviously Senator Watt and I agree on one thing: We disagree on the importance of moving forward with Bill C-6. Senator Watt has shown skilful parliamentary tactics in expressing his view, and I give him credit for that. I wish to congratulate the honourable senator on his speech.

Senator Watt: Is there any real substance to that intervention?

Senator Austin: I do not know what the honourable senator means by "real substance." I have done my best to explain the bill and the work of the committee. I look forward to whatever participation Senator Watt is permitted to make under our rules. I can assure the honourable senator that I will listen with the greatest of care to anything that he may have to say about Bill C-6.

Senator Watt: I thank the honourable senator.

Senator Stratton: Honourable senators, regarding Bill C-6, the specific claims bill, on September 23, this chamber referred the bill back to the Standing Senate Committee on Aboriginal Peoples for the purpose of studying the impact upon Bill C-6 of the recent Supreme Court decision recognizing the Metis people as a distinct Aboriginal nation. To that end, the standing committee heard witnesses who gave their opinions on the application of the Supreme Court decision with respect to this bill.

The government is of the opinion that the *Powley* decision has no bearing on the legislation currently before us. In its estimation, the *Powley* case solely concerns Aboriginal rights, while Bill C-6 deals with specific claims of Aboriginal rights. This is a narrow perspective to take with regard to the impact of this case. In the words of one witness, the *Powley* case has given us a chance to be a little more creative. This decision may very well affect any policy or legislation that the federal government chooses to initiate in the future which draws distinctions between the Metis and other Indian communities.

Paragraph 38 of the decision states that the Metis peoples possess full status as distinctive rights bearing peoples whose own integral practices are entitled to constitutional protection under section 35(1). The wording is very clear, as are the implications.

Honourable senators, I believe that the *Powley* case is the first of several building blocks in defining the place of Metis peoples in Canada, in much the same way that the *Guerin* case was the first block for the First Nations.

The problem we have and had in committee was that many witnesses did not want to appear simply because the Supreme Court decision was so very recent.

Debate suspended.

[*Translation*]

BUSINESS OF THE SENATE

The Hon. the Speaker *pro tempore***:** Honourable senators, it is now 3 p.m., and pursuant to the order adopted by the Senate on October 7, 2003, I am obliged to interrupt the proceedings of the Senate in order to put the question on Senator Kinsella's sub-amendment with respect to Bill C-25.

[*English*]

The vote will take place at 3:30 p.m. Please call in the senators.

• (1530)

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—
MOTION IN SUB-AMENDMENT NEGATIVED

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".

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.".

Motion in sub-amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Kinsella
Atkins	Lawson
Beaudoin	LeBreton
Cochrane	Lynch-Staunton
Comeau	Meighen
Di Nino	Murray
Doody	Nolin
Forrestall	Prud'homme
Gustafson	Robertson
Johnson	St. Germain
Kelleher	Stratton
Keon	Tkachuk—24

NAYS
THE HONOURABLE SENATORS

Adams	Hubley
Austin	Jaffer
Bacon	Joyal
Baker	Kirby
Biron	Kolber
Bryden	LaPierre
Callbeck	Lapointe
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Maheu
Cook	Mahovlich
Cools	Massicotte
Corbin	Moore
Cordy	Morin
Day	Pearson
De Bané	Phalen
Downe	Plamondon
Fairbairn	Poulin
Ferretti Barth	Ringuette
Fraser	Robichaud
Furey	Roche
Gauthier	Sibbeston
Gill	Sparrow
Graham	Stollery
Harb	Watt
Hervieux-Payette	Wiebe—52

ABSTENTIONS
THE HONOURABLE SENATORS

Nil.

SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—DEBATE CONTINUED

On the Order

Resuming debate on the motion of the Honourable Senator Austin, seconded by the Honourable Senator Joyal, for the third reading of Bill C-6, 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, as amended.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators will recall that before the vote Senator Stratton had begun to speak. He was about three minutes into his 15-minute address. For reasons that honourable senators will understand, he plans to attend the funeral of a distinguished Canadian in Winnipeg and has had to catch a flight.

I wish to move the adjournment of the debate so that he can complete his speech at a later time.

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

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am not in agreement with this motion. We have brought this matter back now for the second time. The first flight to Winnipeg is at 5:40 p.m. It is now 3:35 p.m. If the reason that Senator Stratton cannot speak is because he has gone to catch a flight, I am afraid that reason is not valid.

Senator Forrestall: You have to be there an hour before the flight.

Senator Kinsella: Honourable senators, I do not know the schedule of all the flights of Air Canada or whatever airline is being used. I am simply reporting to the house that Senator Stratton advised me that he had to leave for the airport to go to Winnipeg to attend the funeral of a distinguished Canadian to whom tributes have been rendered in this place.

Senator Stratton began his speech. Had there not been so many questions and such long answers from the last senator who spoke, no doubt his speech would have been completed.

All honourable senators know as much about it as I do.

I move the adjournment in the name of Senator Stratton so that he can complete his speech.

Senator Carstairs: Could I ask if another senator is prepared to speak on Bill C-6? If that is the case, we could hear from that honourable senator.

Senator Kinsella: I have absolutely no objection to that, so long as I can preserve the 12 minutes remaining for Senator Stratton. I believe what the Honourable Leader of the Government is requesting is reasonable. If other honourable senators wish to participate in the debate, that is fine, so long as Senator Stratton can complete his speech.

Hon. Anne C. Cools: Honourable senators, there is something very wrong here. The question before us is the motion by Senator Kinsella to adjourn debate in the name of Senator Stratton. We cannot ignore it, hop along and go on to another speaker.

Senator Kinsella moved a motion. That motion and that question should be put to the chamber.

The Hon. the Speaker *pro tempore***:** Honourable senators, is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Lynch-Staunton, that the debate be adjourned in the name of Senator Stratton until the next sitting of the Senate.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Will those honourable senators opposed to the motion 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.

There will be a one-hour bell. The vote will be taken at 4:40 p.m.

• (1640)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Adams	Keon
Atkins	Kinsella
Beaudoin	LeBreton
Biron	Lynch-Staunton
Comeau	Massicotte
Cools	Nolin
Di Nino	Prud'homme
Forrestall	Robertson
Gill	St. Germain
Gustafson	Tkachuk
Kelleher	Watt—22

NAYS
THE HONOURABLE SENATORS

Austin	Harb
Bacon	Hubley
Baker	Jaffer
Bryden	Joyal
Callbeck	Kolber
Carstairs	LaPierre
Chalifoux	Léger
Chaput	Losier-Cool
Cook	Maheu
Corbin	Mahovlich
Cordy	Moore
Day	Pearson
De Bané	Ringuette
Downe	Robichaud
Fairbairn	Sibbeston
Fraser	Stollery
Gauthier	Wiebe—35
Graham	

ABSTENTIONS
THE HONOURABLE SENATORS

Hervieux-Payette	Sparrow—3
Lavigne	

The Hon. the Speaker *pro tempore***:** Honourable senators, I declare the motion defeated and we will resume debate.

Hon. Gerry St. Germain: Honourable senators, I move adjournment of the debate, seconded by Senator Prud'homme.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I saw that Senator Gill was prepared to speak, and it is customary to allow a senator to continue the debate before hearing a motion for adjournment.

Senator St. Germain: I agree.

[*English*]

Senator Kinsella: Honourable senators, on the point raised by the Deputy Leader of the Government, the rules provide that, upon defeat of a motion like that, an intervening matter must occur. Therefore, the intervening matter, I take it, will be the speech from Senator Gill.

• (1650)

[*Translation*]

Hon. Aurélien Gill: Honourable senators, since Bill C-6 was referred to the Standing Committee on Aboriginal Peoples on September 28, we have heard from witnesses, including Peter Hutchins, as an individual, and representatives of the First Nations. The latter appeared on behalf of the new National Chief, Phil Fontaine.

In the Senate prior to September 28 during the debate on Bill C-6, the Honourable Charlie Watts moved that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs. Following a discussion, this amendment was changed. Some senators had recommended that the bill be referred to the Standing Committee on Aboriginal Peoples rather than the Standing Committee on Legal and Constitutional Affairs. That is what we did.

In the meantime, the *Powley* case was raised in the Senate. In light of the debate on the *Powley* affair, an amendment was moved. Prior to this, honourable senators will remember that there were numerous discussions on the specific claims by Aboriginal peoples. Coincidentally, the *Powley* case occurred, and the debate focussed solely on this case.

We have heard witnesses who discussed not only the *Powley* case, but also territorial claims in general, with respect to the First Nations. Again, as I said before and say again, the vast majority of witnesses, both Aboriginal and non-Aboriginal, wanted the bill to be simply dropped or significantly amended. I repeat this, because it is important to know that, in this country, democracy works some of the time, but not all of the time.

The vast majority of First Nations people wanted to see major changes or to see the bill dropped, because they did not believe it met the objectives of the First Nations.

People were wondering whether the new National Chief, Phil Fontaine, was saying the same thing and going in the same direction as the previous National Chief, Matthew Coon Come. It became clear in committee that National Chief Phil Fontaine is urging the government not to pass this bill, but rather to discuss it further. Peter Hutchins, an expert, told us: "Wait, take your time; there are some major issues in this bill."

With your permission, I would like to read a letter tabled with the Committee on Aboriginal Affairs. I appreciate that you may not understand the context because you were not at the committee meeting. I regret that the sponsor of the bill is not here on this occasion. He could have helped explain the context.

This letter is addressed to the chair of the committee and signed by Phil Fontaine. It reads, and I quote certain excerpts:

[*English*]

> For several years the AFN and federal officials participated in a Joint Task Force ("JTF") to consider the requirements of an effective specific claims body. In an unprecedented spirit of partnership, the JTF produced a model of a sound and effective system. The exercise should have stood as a landmark in cooperative policy development.
>
> Instead, the federal government rejected the model suggested by the JTF and terminated consultation. It produced a Bill that continues, rather than resolves, the problems of the past, including delay and conflict of interest on the part of the federal government.
>
> It is not too late. Despite all that has happened, a federal government that wishes to return to the constructive, mutually-respectful and results-oriented dialogue will find a willing partner in the AFN.
>
> The federal government still has a chance to meet with the AFN, restore the spirit of partnership, and work together to produce a specific claims Bill that will benefit all Canadians.

[*Translation*]

I would like to add the following. Many people were wondering whether the Assembly of First Nations was concerned only about itself, to the exclusion of all others.

[*English*]

> First, the AFN supports reasonable and just responses to the just claims of all Aboriginal peoples, including the Inuit and the Metis.

[*Translation*]

This is a letter signed by Phil Fontaine, National Chief of the Assembly of First Nations. Some people wondered whether the present chief supported the positions of his predecessor, Matthew Coon Come. The four-page letter is very clear and has been transmitted to the Aboriginal Affairs Committee for their records. I suggest you refer to it if you wish to know more.

Here is what I really want to know: when are we going to start to establish a real partnership? Why this system? Why would we not be allowed to have such a partnership, not just for the First Nations, but for all Canadians? I know that everyone is tired of conflict, and many people wonder what can be done. There is one thing that can be done for certain: to show trust, as we normally should. You must trust the leaders of the First Nations, regardless of what is said about their reputations.

I was a chief for 10 years. For several years, I was responsible for Indian and Northern Affairs in Quebec. During that entire time, I was a manager for the Department of Indian and Northern Affairs. I never found a single chief who was guilty of any type of fraud. I am not saying that there were not any problems in management; everybody makes mistakes. I did not see a single chief during that whole time, and I know them, convicted or accused of being dishonest by the Aboriginal population. Today, people continue to pass judgment.

I digress. There seems to be a general sense that Aboriginals or Indians are unable to make their own decisions and that someone has to do this for them. Certain senators have told me this. If we have reached that point, are we still living in a democracy? Allowing Aboriginals to resolve their own problems and find their own solutions would benefit everyone in Canada.

In conclusion, honourable senators, I would like to move an amendment to the bill.

MOTION IN AMENDMENT

Hon. Aurélien Gill: Honourable senators, I move:

> That Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

The Hon. the Speaker *pro tempore***:** Honourable senators, is it your pleasure to adopt the motion in amendment?

• (1700)

Hon. Marcel Prud'homme: The honourable senator has said that he was, in a prior life, responsible for the Department of Indian Affairs and Northern Development. So that the senators can grasp the significance of his experience, could he repeat that part of his previous and more recent responsibilities? That would give us a better idea of his knowledge and for those of us with less knowledge, we would learn something. Perhaps we will be more intelligent.

Senator Gill: Honourable senators, very briefly, of course I cannot tell you everything I have done; I am getting to a certain age. I can say that I have spent my life in the Aboriginal world and I was born in an on-reserve community; I still live there; and I shall die there, too.

I was a chief for a number of years. I was a teacher in the Indian schools, at first. I was the Director General, in the Department of Indian and Northern Affairs, for all of Quebec. Senator Watt and the others will remember. I was responsible for managing the Department of Indian Affairs in Quebec. And, of course, I was on the Indian Specific Claims Commission for some years. I had to resign when I was appointed to the Senate.

Hon. Pierre Claude Nolin: Honourable senators, in light of what Senator Gill has told us, we see that he is almost an expert witness in this field.

The First Nations Chief, Mr. Fontaine, has said that there was a problem of conflict of interest and that it was not yet settled. I remember having asked questions of the sponsor of the bill, before we decided to refer it to the Aboriginal Peoples Committee, precisely because of this conflict of interest issue. Speaking as a lawyer, we cannot approve the establishment of a judicial system with this conflict-of-interest cloud hanging over it. Given the professional experience of the honourable senator, I would like him to tell us about this conflict of interest.

Senator Gill: Honourable senators, I am neither a lawyer nor a legal adviser. Senator Austin says that the new institution we are creating is separate from the Department of Indian Affairs. I agree with him.

Who has responsibility for this? Who will decide what amounts are involved? Who will decide what judges to appoint? I understand that this is separate from the Department of Indian Affairs. Previously, it was the department that decided. Now, who will select the judges and set the time period in which to respond to a territorial claim from communities across Canada? Who will tell the minister to say yes or no? This is an improvement over the previous system. There have always been annual reports.

The Hon. the Speaker *pro tempore***:** Honourable senators, the honourable senator's time has now expired. Are you seeking leave to continue?

Senator Gill: Yes, please.

Hon. Senators: Agreed.

Senator Gill: Honourable senators, the commission I sat on presented annual reports. The same issue was raised without fail every year. We were asking for greater autonomy, in a way that would force the minister to respond. He could say yes or no, but one way or the other he had to respond. We also wanted real rules for negotiation, meaning no decision before arguments were heard and negotiations held on the amounts, among other things.

Now, there is a ceiling on the amount and the minister does not have to respond within a certain time period.

Some communities are negotiating. I speak from experience because my nation, the Innu, has been negotiating since 1975. Do you think that things will change? I see no improvements. Initially, I was not sure, because I felt I did not have all the facts. All those with an interest in this, the lawyers and everyone who appeared before the committee said the same thing: Is the bill's sponsor, Senator Austin, the only one to see clearly? Everyone is following in his footsteps. There is a Montagnais saying: "There are those who blaze the trail; the trail can be good or bad." In my opinion, this bill contains conflicts of interest; one party is both judge and jury. This is extremely clear.

Senator Nolin: Honourable senators, the purpose of referring the bill to committee again was to hear other witnesses so as to clarify for senators the issue relating to conflicts of interest and the implementation of a legal system that upholds the fundamental rights we want upheld in Canada. Did experts comment on this and, if so, what did they say?

Senator Gill: For the most part, the witnesses had legal training. They either represented groups or appeared as individuals. This was very clear, because witnesses must identify themselves to the committee. The majority had experience as managers, recipients or advocates for these groups. A fair number of them were lawyers. Most were opposed to the bill.

Senator Nolin: Honourable senators, the conflict of interest issue is a very serious one. Did witnesses comment on this issue specifically, and were any solutions recommended?

Senator Gill: Honourable senators, it was addressed. The Department of Indian Affairs has traditionally been regarded as both judge and jury. This is not something specific to this bill. That is why changes are in order, to ensure a degree of fairness and objectivity. This point was made by several people, that is a fact.

Senator Nolin: Were any alternatives suggested?

Senator Gill: Honourable senators, on the one hand, the majority of witnesses were in favour of dropping this bill, which they did not feel was an improvement, and, on the other hand, they called for major amendments concerning the funding cap, the time limit on claims, and many more amendments.

There was an improvement with respect to the financial ceiling. The ceiling was increased from $7.3 million to $10 million. This was a recommendation the committee made. I do not know if it will be adopted. The fact is that there is no time limit or major improvements in other areas. There are only administrative arrangements.

• (1710)

[*English*]

Hon. Anne C. Cools: Honourable senators, I was listening with some care to the honourable senator who has informed us that Chief Phil Fontaine has taken a position on this matter. This is very new information to me.

Could Senator Gill tell us the date of the letter from which he was reading, as well as to whom the letter was addressed?

[*Translation*]

Senator Gill: The letter is dated October 2, 2003, and is addressed to Senator Thelma Chalifoux, the chair of the committee. It is signed by National Chief Phil Fontaine.

[*English*]

Senator Cools: Is the letter addressed to Senator Chalifoux as the Chairperson of the Standing Senate Committee on Aboriginal Peoples?

[*Translation*]

Senator Gill: I guess so, because it is addressed as follows: Chairperson, Senate Standing Committee on Aboriginal People.

[*English*]

Senator Cools: Honourable senators, it seems that this letter and the opinions expressed therein are of some importance to the debate and to the consideration of this chamber. For me, it is new information and I think very important information.

Senator Gill has quoted from Chief Fontaine's letter. Could Senator Gill table that letter for us today so that it may form part of our record and so that senators will be able to look at it tomorrow?

[*Translation*]

Senator Gill: Honourable senators, I do not know the procedure, but should we seek leave from the recipient of the letter, Senator Chalifoux? Is it necessary to seek leave from the committee? I do not know the procedure.

[*English*]

Senator Cools: It is simple. The honourable senator just has to ask the chamber for leave to table it and then hand it over to the table officers.

[*Translation*]

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

Hon. Senators: Agreed.

[*English*]

Hon. Charlie Watt: Honourable senators, will Senator Gill entertain at least one other question?

[*Translation*]

Senator Gill: If it is not too difficult.

[*English*]

Senator Watt: I know the honourable senator has participated and has been involved in a direct fashion with the activities that have been established for the Aboriginal peoples in the past. As the honourable senator described, he was a director general in Quebec City. In other words, the honourable senator was running the Department of Indian Affairs in Quebec City, something which I remember so well. During his capacity as director general, did he know that the conflicts still existed within the department itself? Could the honourable senator elaborate further on that point?

[*Translation*]

Senator Gill: Honourable senators, I have always tried to work, regardless of my responsibilities, on First Nations' priorities with the view of serving Canada. In my view, I have always served correctly. I did so by serving Aboriginals and this country. I have always felt this conflict.

[*English*]

Hon. Gerry St. Germain: Honourable senators, I have a question. I have been in Ottawa for 20 years, 10 years in the other place and 10 years here. Over that period of time, I have noticed the way we work as partisans. In the field of Aboriginal affairs, we have made an attempt to make our work non-partisan.

When we worked on the Nisga'a agreement there was some discord. However, when someone like Senator Gill rises to speak, he takes a position based on his experience.

With all due respect to Senator Austin, he is not an Aboriginal. He is a great Canadian and he has done incredible work in British Columbia. However, he has been given his marching orders, which I think are trampling the rights of Aboriginal peoples.

Senators Gill, Watt and Adams are appreciative of their connection with the Liberal Party. However, this issue rises above Liberalism, Conservativism or Alliancism.

Does the honourable senator feel that the rights and concerns of our native peoples are being trampled by forcing and pushing this bill through as it concerns the appointment of commissioners?

[*Translation*]

Senator Gill: My feeling is yes, that is right. This is not something that has just come up. It is not new. It has been going on for a very long time. I wonder, when will this end?

[*English*]

Senator St. Germain: I do not know when we will stop. Today, we have been speaking about the Metis situation. I was corrected by Senator Austin, who was one of the proponents of the Canadian Charter of Rights and Freedoms in 1982. He correctly stated that the rights of the Metis flowed from the Charter of Rights. However, the rights of the Metis people had to go through the Supreme Court. If those rights were entrenched, why then did the Metis have to go to the Supreme Court in the case of *Powley* to get their hunting rights? Senator Austin says that they have these rights through the Constitution. However, they have to pursue them before the Supreme Court.

Senator Gill is right when he says to Canadians that the rights of our Aboriginal peoples have been trampled on from day one, whether it is with regard to residential schools, reserves or any other issue. It is not what they wanted. It is what the White community wanted. Does the honourable senator think it will ever stop?

[*Translation*]

Senator Gill: Despite all my feelings and emotions, I think I am confident, despite all the problems we face.

[*English*]

Hon. Willie Adams: Honourable senators, I move adjournment of the debate.

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

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wish to know the reason for the adjournment. I believe Senator Gill's motion has not been moved. Are we adjourning debate on the amendment? The amendment has not, to my knowledge, been moved. We have not had the question. I have no problem with the adjournment motion being allowed on the motion in amendment. I just want to be sure that we have had the question on the motion in amendment, that debate followed on that amendment, and that we are adjourning on the motion in amendment by Senator Gill. I want to see the situation clarified.

• (1720)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I agree, because I was waiting for Your Honour to present the amendment to the Senate. The solution is very simple. If Your Honour would be so kind as to present the amendment proposed by Senator Gill.

The Hon. the Speaker *pro tempore***:** Honourable senators, it is moved by Senator Gill, seconded by Senator Watt:

> That Bill C-6 be not now read the third time, but that it be read a third time this day six months hence.

[*English*]

Senator Adams: Honourable senators, I would like to move adjournment of the debate.

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

On motion of Senator Adams, debate adjourned.

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

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".

Hon. Consiglio Di Nino: Honourable senators, I am pleased to intervene in this debate. Bill C-25 replaces relative merit with individual merit, delegates authority down to lower level managers, makes it easier to hold competitions where only one qualifies and reduces the ability of the Public Service Commission to intervene.

The Privacy Commission was more or less allowed to run its own show on personnel matters.

With the release of the Public Service Commission's audit of the Privacy Commission's hiring action, and with the release of the Auditor General's report, we see the kind of problems you invite if you delegate away authority without proper safeguards.

One area in particular is the opportunity for managers to twist competitions so that only one candidate qualifies. Honourable senators were repeatedly warned in committee that managers will be able to twist job qualifications so that only one candidate qualifies. Anyone who does not think that this will happen would do well to look at the Auditor General's report. Under the subheading "The Office of the Privacy Commissioner Manipulated the Process to Favour Particular Candidates," she writes:

> We noted competitions with selection criteria that favoured a particular candidate but had no relevance to the actual position. In several cases, language requirements were changed to match the profile of the favourite candidate rather than the requirements of the position itself.
>
> In another case, preference was to be given to a person with experience in "print media" that seemed unrelated to the work to be performed. When the Office wanted to hire a particular candidate from outside the organization who knew very little about the Privacy Act and other relevant legislation, the requirement to have this knowledge was weighted lightly. When the Office wanted to exclude applicants from outside, it required a thorough knowledge of privacy-related legislation.

Honourable senators, we need to ensure that qualifications cannot be changed without the agreement of the Public Service Commission. Surely we ought to have learned something from the Privacy Commissioner's fiasco.

The Auditor General, at a press conference, said that she was outraged by what she found. In her media release, she said:

> I am sorry to say that our audit revealed a major failure of management controls and the abuse of public funds by the former Commissioner and some senior executives, for their personal benefit.
>
> What's even more disturbing was the treatment of employees. The human cost has been significant. I am concerned that an even greater harm may be done if this unusual case is generalized to all the employees of the Office of the Privacy Commissioner and the entire public service. This would do a great disservice to the thousands of honest and dedicated men and women who serve Canadians across this country.

She continued:

> The former Commissioner and some senior executives failed to discharge their management obligations, and central agencies did not take appropriate action when they became aware of the problems. That's why this situation existed for so long.

Among many things found by the Auditor General are: one, that the positions were overclassified, resulting in high salary costs, and that there was hiring favouritism and unjustified performance awards; two, that there was an improper payment of $15,000 to the former commissioner; three, that statements were falsified to cover up spending over the limits set by Parliament, that is, us; and four, that little value was received for the travel and hospitality bills of the former Privacy Commissioner.

The Auditor General also said that, "Whistle-blowing mechanisms are perceived as ineffective or non-existent."

She said that employees:

> ...perceived the avenues for reporting wrongdoing or financial mismanagement as generally ineffective, offering little or no protection to staff who might notify a superior officer or the Public Service Integrity Officer."

She further said that employees:

> ...told of a poisoned work environment at the Office of the Privacy Commissioner in which staff were intimidated by the former Commissioner. Our interviews consistently revealed instances of authoritarian behaviour amounting to what employees called a "reign of terror."

She went on to state that:

> ...our interviews repeatedly disclosed instances of his humiliation of staff, inappropriate comments, intolerance, and verbal abuse that were socially unacceptable — in either Canada in general or the public service in particular.
>
> Some employees said they had been discouraged from documenting their concerns; those who did had been treated poorly.

Honourable senators, we are also told that, "...employees broke down as they recounted how they had been treated." She stated:

> We learned that some employees who had questioned or displeased the former Commissioner or his inner circle were banished from the Commission's floor, excluded from meetings they should have attended, not allowed to put their names on reports, and moved to other positions; in one case, the employee's work was contracted out.

As for core public service values, there was:

> ...a blatant disregard of four critical values that the Public Service Commission has espoused for staffing: nonpartisanship (including bureaucratic patronage), fairness, equity, and transparency. We found ample evidence of the avoidance of staffing competitions and the working around of staffing processes established by the Public Service Employment Act.
>
> We found instances of the hiring of friends, acquaintances or former colleagues of the former Commissioner and senior executives.

• (1730)

She gave the example of a student position created for the girlfriend of a former Commissioner's son, at a salary 50 per cent above the norm for a summer student, with an extremely light workload, despite the individual's request to be assigned more work.

Honourable senators, part of the problem is that the Public Service Commission has been hamstrung in recent years by a lack of resources, making it harder to audit inappropriate hiring and promotions. Part of the problem is that the Public Service Commission was not aggressive enough. Part of the problem is that they made the mistake of believing the Privacy Commissioner's senior staff when they said that they were making progress in dealing with the problems that had been raised.

As the Public Service Commission noted in its response to the Auditor General, their oversight program, "...relied on deputy heads taking action to follow up on concerns brought to their attention, with direct intervention as a last resort."

Mr. Greg Gauld, the Public Service Commission's Vice-president of Merit, Policy and Accountability, was reported, on September 30, 2003 in the *Ottawa Citizen* as having said, "This is probably the worst (case) we've seen in terms of staffing."

The following is from the Summary of Main Findings from the Public Service Commission's audit. It states:

> The audit team found that:
>
> The Office of the Privacy Commissioner's (OPC) strategies, plans and policies in support of staffing and recruitment activities are inadequate;
>
> The roles and responsibilities pertaining to staffing are not adequately delineated and carried out;
>
> Communications related to staffing activities are inadequate;
>
> Reporting and control systems with respect to staffing activities are inadequate;
>
> The mix of staffing processes and sources of candidates is not appropriate to assist the OPC to meet the challenge of putting in place an enhanced mandate;
>
> The staffing of non-executive positions does not comply with the relevant legislative and policy framework;
>
> The Public Service Commission (PSC) staffing of executive positions is generally in compliance with the relevant legislative and policy framework. Some of the actions, however, cast doubt on the application of staffing values; and
>
> The OPC respects the technical requirements of the policies which govern the internal disclosure of the OPC staff of their concerns related to staffing. This includes the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace. This is not, however, an effective mechanism to address wrongdoing in staffing.
>
> The findings of this audit are that there are serious deficiencies in the management and operations of staffing and recruitment in the OPC.

Honourable senators, there was a disturbing disregard for the merit principle and for the law governing non-executive appointments. Yet, Bill C-25 would make it easy to tailor a competition so that only one favourite candidate qualifies. Have we not learned anything? The Public Service Commission's audit remarks on non-executive staffing offers but a small taste of what we can expect after Bill C-25 becomes law. Speaking of staffing over the period of September 2000 to June 2003, the report noted:

> The audit team found that the staffing of non-executive positions does not comply with the relevant legislative and policy framework.
>
> ...the audit team found a tendency to tailor staffing requirements to favour a particular individual. The pattern of transactions casts doubt on whether the staffing values are respected.

Staffing was placed in the hands of managers who did not respect the process, leading to this commentary:

> The lack of strategies, plans and policies in human resources management results in one-off decision-making about staffing, which is not necessarily in the long-term, best interest of the OPC. All of this leads to the perception that staffing values are not respected, in particular equity of access and the absence of bureaucratic patronage.
>
> Everyone interviewed indicated that, within the Office of the Privacy Commissioner, managers decide on the desired results, i.e, whom they wish to recruit or promote, and human resources staff "make it happen". The result is a widespread disregard for the staffing values which underpin the current legislative framework.

Honourable senators, is individual rather than relative merit really the way to go? Is removing some of the current staffing safeguards really such a good idea?

With regard to reporting and control systems with respect to staffing, we are told that:

> No results information with respect to staffing objectives is requested by, or provided to, senior management; management receives only status reports on ongoing staffing activities. Reports to central agencies on staffing, Employment Equity and Official Languages are not used to support management decision-making.

In a review of some of the appointments, we are told that:

> Out of 35 reclassifications affecting 27 employees, 13 cases involved prior deployments or transfers and of these, five [...] were reclassified within a one-month period and an additional two [...] within a four-month period; this approach puts equity of access and transparency at risk;
>
> A total of 34 employees were deployed or transferred and seven[...] received acting pay immediately or the day after; this raises doubts about competency, equity of access and transparency.;
>
> 13 employees were converted from casual (or contract) status to term or intermediate status through open competition, for which the staffing requirements were tailored so that they would be successful; again, equity of access and fairness are at risk.
>
> In 22 cases, there was inadequate documentation to demonstrate that the merit principle had been applied — no or incomplete assessment, no valid eligibility list, discrepancies in and inappropriate modifications to, language and security requirements; and
>
> Seven employees may have had their recruitment to, and in some cases subsequent advancement within, the OPC influenced as a result of a previous business relationship or acquaintance with the former Privacy Commissioner.

The Hon. the Speaker *pro tempore***:** Honourable senator, your time has expired. Do you wish to ask for leave to continue?

Senator Di Nino: Honourable senators, I would ask leave to continue.

Hon. Senators: Agreed.

Senator Di Nino: I thank honourable senators.

Hon. Jean-Robert Gauthier: I am trying as hard as I can to follow Senator Di Nino's argument. He is dealing with the sub-amendment to the main motion and I do not understand why he raises the matter of classification because it has nothing to do with the merit principle. Classification standards are set by the employer and the merit principle is followed by the commission. It is completely different.

Senator Di Nino: If the honourable senator would allow me to finish, I will answer questions later.

While the government still refuses to legislate whistle-blowing protection we are told:

> A majority of employees and managers interviewed stated that the feared reprisals in future appointments should they complain about wrongdoing in the Office the Privacy Commissioner. They also indicated a lack of confidence that central agencies play an effective oversight role while protecting an employee who complains.

Honourable senators, I seriously do not understand why the government would want to pass this bill as is, knowing the kind of headlines that it may generate three or four years down the road. Perhaps Bill C-25 is a Trojan horse left as a gift for Mr. Martin by the outgoing regime.

In a written statement responding to the Auditor General's report, the President of the Treasury Board said: "I am very concerned and distressed by her findings. This is not the public service I know."

• (1740)

Honourable senators, we cannot in all good faith pass Bill C-25, a public service reform bill that may very well be based on a fallacy of a public service that we are not sure exists. Talk to ordinary rank-and-file public servants and they will tell you that they often know who will win a competition before the poster is even written. At least there is some transparency under the current rules and some checks and balances. Talk to visible minority public servants and many will tell you that discrimination in the workplace is hampering their chances for advancement, even with the safeguards we now have. Ask ordinary public servants if they would expose wrongdoing, and they will tell you that they have no burning desire to toss away their careers.

We would like to think that the potential for similar problems in other small fiefdoms elsewhere in the government is non-existent, but we do not know this for a fact. Yet, we are asked to delegate more authority down the chain.

Honourable senators, we need to take a serious re-examination of the way this bill affects the merit principle, of the way it guts the existing safeguards or the lack of protection for whistleblowers, and the way it allows hiring authority to be delegated away from the Public Service Commission. This bill needs to be amended to ensure that managers cannot unilaterally change job descriptions simply to fit the person they want to hire. It needs to be amended to ensure that the instances of bureaucratic patronage found by the Auditor General are not allowed to happen again.

MOTION IN AMENDMENT

Hon. Consiglio Di Nino: Therefore, honourable senators, I move, seconded by Senator Nolin, that the motion in amendment be amended

(*a*) by replacing the words "on page 126, by replacing lines 8 to 12" with the following:

"(*a*) on page 126, by replacing lines 8 to 11";

(*b*) by adding after the words "free from political influence" the following:

"and bureaucratic patronage"; and

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

"of the Commission."; and

(*b*) on page 127, by adding after line 9 the following:

''(3) The qualifications referred to in paragraph 30(2)(*a*) and subparagraph 30(2)(*b*)(i), and any qualification standards referred to in subsection (1), that are established for an appointment in respect of a particular position or class of positions shall apply to future appointments in respect of that position or class of positions, unless any change established by the deputy head or employer to the qualifications or qualification standards, as the case may be, is approved by the Public Service Commission."".

[*Translation*]

Hon. Jean-Robert Gauthier: Honourable senators, I would like to speak to this amendment. Could I have a copy of the amendment? I was in the hospital for three years, and they said I was impatient.

[*English*]

I have the sub-amendment. I wish to speak to it because I have been working hard on Bill C-25 and have not had a chance to address the main motion yet. Keeping with tradition, I believe I have a right to speak on this bill.

On motion of Senator Gauthier, debate adjourned.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for 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.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, when the Leader of the Government spoke in presenting this bill, she drew our attention to the work of Senator Oliver. Senator Oliver is the opposition's critic on this bill. If it is agreed to by the house, I would like to move the adjournment of the debate in the name of Senator Oliver such that he would have the 45 minutes to continue. However, I would not want to impede the progress of our work on this bill if other honourable senators wish to speak now.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): I would invite the honourable senators who intend to speak on this bill to do so today or tomorrow, when there will be a little more time. We accept Senator Kinsella's suggestion that the debate be adjourned in the name of Senator Oliver; even if someone were to speak ahead of him, he would keep his position as second speaker after the Leader of the Government.

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

• (1750)

[*English*]

PUBLIC SERVICE WHISTLE-BLOWING BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kinsella, seconded by the Honourable Senator Murray, P.C., for the second reading of Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers.—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have been advised that I have 40 more minutes of speaking time.

Bill S-6 has come up in discussion on Bill C-25 in committee. There is a relationship between the two bills. Indeed, the issue of whistle-blowing was raised in Senator Di Nino's remarks this afternoon.

A great deal of public attention has been given by the media in recent times to the question of the importance of there being a legislative framework to deal with the matter of whistle-blowing, some of this attention occasioned by the events at the Office of the Privacy Commissioner and also the comments of the Auditor General.

Honourable senators, the model contained in Bill S-6 is exactly the same one that was contained in the bill that received second reading and committee support in the previous session but, as we know, fell off the Order Paper with the prorogation. The Senate is playing a major role by keeping this item before Parliament, even if it is in this form at this point in time. I would rather continue the debate on Bill S-6 after seeing how things proceed with Bill C-25. I know honourable senators opposite will want to share their views on what the President of the Treasury Board is proposing. We have yet to address that particular issue in our examination of Bill C-25.

On motion of Senator Kinsella, debate adjourned.

[*Translation*]

HUMAN RIGHTS

BUDGET ON STUDY OF SPECIFIC CONCERNS—
POINT OF ORDER—SPEAKER'S RULING—
REPORT OF COMMITTEE ADOPTED

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. —(*Speaker's Ruling*).

The Hon. the Speaker *pro tempore***:** Honourable senators, yesterday, as debate was to begin on the motion for the adoption of the Fifth Report of the Standing Committee on Human Rights, Senator Lynch-Staunton raised a point of order. The Leader of the Opposition explained that the terms of the order of reference under which the Human Rights Committee is now operating did not include the authority to travel. The present mandate of the committee, as the senator stated, authorizes it to hear witnesses with specific human rights concerns. As he noted, there is no suggestion that the committee would travel. It is Senator Lynch-Staunton's contention that, and I quote, "It has always been our practice that, if a committee believes that it must travel to fulfill its terms of reference, it include 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 is asking it to undertake." The Leader of the Opposition then cited two parliamentary authorities to the effect that committees are strictly bound by their orders of reference and are not at liberty to depart from them. Based on this analysis, Senator Lynch-Staunton maintains that the Standing Committee on Human Rights in fulfilling its current mandate is limited to the national capital region "because no authority was requested at the time to pursue its study beyond that geographical area."

[*English*]

In reply, Senator Maheu reviewed the nature of the committee mandate and the importance of the requested trips to Geneva and Strasbourg. Such trips, the honourable senator explained, are an essential part of the committee's work because they allow the membership to better understand Canada's international human rights obligations as well as provide an opportunity for the committee to view the structure of human rights protection and promotion at an international level. In summary, Senator Maheu claimed that the proposed trip, like the one made by the committee to Costa Rica in the context of a previous study, helps to advance the work of the Senate.

Senator Robichaud, the Deputy Leader of the Government, explained that the process being followed by the committee in requesting the trip through a report was in keeping with the practice of the Senate. A committee undertaking a special study seeking to travel must first prepare a budget estimating the cost of the trip. This budget is then reviewed by the Standing Committee on Internal Economy, Budgets and Administration. Once the Internal Economy Committee has made its findings, it must then submit a report to the Senate. This report, which includes, as an appendix, information on the costs of the trip as approved by Internal Economy, must be adopted by the Senate. Without the Senate's sanction, the committee cannot travel anywhere.

There were other interventions on this point of order. Senator Kinsella, Senator Stratton and Senator Nolin expressed views in support of the general position taken by Senator Lynch-Staunton. I wish to thank all honourable senators for their contributions on this matter. This topic has already been the object of comment at various times during this session. As recently as last May, Senator Lynch-Staunton had several exchanges with Senator Kenny about the procedures in place to determine the cost of committee studies.

Whatever the merits or flaws of our procedures in setting committee budgets especially in connection with requests to travel, as Speaker I am bound by the practices and policies that the Senate itself has approved. Since 1986, the Senate has followed certain procedural guidelines with respect to what are termed "special expenses," including travel, that might arise in connection with committee studies. These guidelines have been printed as Appendix II of the *Rules of the Senate*.

In addition to setting out the steps that must be followed to secure approval for travel that Senator Robichaud mentioned, paragraph 2:02 of the guidelines states that:

> A notice of motion to establish a special committee or to authorize a committee to conduct a special study shall not refer to special expenses but shall set a date by which the committee is to report to the Senate.

This passage has been taken to mean that no order of reference mandating a "special study" by a particular committee ought to contain any blanket authorization to travel.

[*Translation*]

Yesterday, some senators referred to an earlier study undertaken by the Human Rights Committee respecting the Inter-American Convention on Human Rights. The Senate adopted that order of reference on November 21, 2002. In keeping with paragraph 2:02 of the guidelines, the order of reference contained no mention of traveling. It simply authorized the committee "to examine and report on Canada's possible adherence to the American Convention on Human Rights." The order of reference also established a reporting date of June 27, 2003. At some point during its work, the committee came to the realization that it needed to go to Costa Rica to properly fulfill its mandate even though the original order of reference contained no provision for travel anywhere. In order to obtain permission of the Senate to go to San José, the committee followed the procedure stipulated in the guidelines. It prepared a budget, which was submitted to the Committee of Internal Economy, Budgets and Administration for approval, and then sought the permission of the Senate to travel through a separate report.

The object of the fifth report is no different. The steps that have been taken by the Human Rights Committee in seeking authorization to travel to Strasbourg and Geneva are in keeping with the established guidelines. Accordingly, I find that there is no point of order and debate on the fifth report can now proceed.

Honourable senators, it is now 6 p.m. Pursuant to rule 13(1), I shall leave the chair until 8 p.m.

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

[*English*]

Hon. Anne C. Cools: Your Honour, I think it is in order to inquire of the honourable senators as to whether they wish you to see the clock. I think that is the question that Your Honour should have placed.

The sitting of the Senate was adjourned until 8 p.m.

• (2000)

The sitting of the Senate was resumed.

[The Hon. the Speaker *pro tempore*]

Senator Carstairs: Question!

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, our rules do not allow us to debate the Speaker's ruling and I respect that, though I may not agree with the conclusion.

This does, however, highlight the fact that, at least in my interpretation, our conditions and directives to committees as to how they should apply for terms of reference and for the budget accompanying those terms should be reviewed. I have been through this before. I will not repeat at length what I have tried to say before, which is that I urge the Internal Economy Committee to issue firm guidelines respecting the terms of reference of a committee to insist that the terms of reference be clear; that, if travel is thought to be necessary, it be included in the original terms of reference; and that a budget be included at the same time. Therefore, when the issue is raised for the first time, we can debate it not piecemeal, as we do too often, but debate the request as a whole and get it over with once and for all.

In this case — and this has nothing to do with any view I may have regarding the Human Rights Committee — the issue had to do with procedure. In May the committee's terms of reference did not include travelling, but a few months later we were told that a further budget was required to do something that had not been raised in the first instance.

That being said, this is a plea to the Standing Senate Committee on Internal Economy, Budgets and Administration which, although it has enough on its plate, it is allowed to sit during any adjournment and prorogation of the Senate, to design some guidelines and come back to us with a procedure so that any committee that requires terms of reference will know that, once those terms of reference are confirmed, it cannot come back to us.

Having said that, I will get on to the merits of the mission itself. I have no objection to it. It is quite proper that the Human Rights Committee should be able to meet with experts in the field all over the world. I have no problem with that at all. The problem I have with it is this: Is this the right time to do it? Unless a government spokesperson can contradict this, it is obvious from what we hear and read that, after November 7, we will have adjourned until perhaps late January or sometime in February. That means that, if the members of the committee are allowed to go on this trip now, by the time they get back, unless they report within a short period of time, we will not have the benefit of knowing what they achieved by taking this trip.

My suggestion to the chair of the committee is this: Would it not be best to delay the trip to a time when, upon your return, you know that you will have time to prepare the report and table it when the Senate is in session? If, after November 7 we are dismissed from this place until early next year, unless you commit to tabling a report before November 7, the trip will not benefit the Senate, which will have authorized it.

Hon. Shirley Maheu: Honourable senators, I would thank the Leader of the Opposition in the Senate for his intervention. Senator Beaudoin and Senator LaPierre will be travelling. Senator Beaudoin is in the habit of supplying documented information to this place. He is a fountain of knowledge. We will be meeting with groups who have already criticized our government. A report will be prepared as we travel in Geneva and in Strasbourg. Does that answer the honourable senator's preoccupations?

Senator Lynch-Staunton: My preoccupation is that the benefits derived from the trip will not be known to us before we leave this place on November 7. By the time we get back, because of prorogation — that is, unless it can be denied by the government that there is no prorogation in sight — your committee will be dissolved and all your efforts and expertise, from which we could have benefited, will be for naught. Perhaps selecting another time may not be convenient for those prepared to travel, but it may be more beneficial to those of us who want to take advantage of whatever the committee will learn on its travels.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, perhaps I may suggest a combination of what Senators Maheu and Lynch-Staunton have put forward. As senators and members of committees, we have an ability to table interim reports. I cannot give the honourable senator opposite an assurance that we will or we will not have a prorogation, since I simply do not know. However, I could suggest to Senator Maheu that the committee table an interim report on their trip prior to or on November 7. That would allow the entire Senate chamber to benefit from the experience that they acquire.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have a question for the senator who has just spoken. What is this about prorogation that the honourable senator mentioned? How could the government possibly justify prorogation when the —

Senator Carstairs: I would point out that Senator Lynch-Staunton introduced the word.

Senator Kinsella: My question is this: Given the fact that we have Canadian soldiers in Afghanistan; given the fact that we have not solved the mad cow problem affecting Canadian beef producers; given the fact the flu season is about the begin and we may be faced with another reappearance of SARS; given the tragedy of the damage that was caused by the recent hurricane on the East Coast; and given the fact of the damage that has been caused by the forest fires on the West Coast, how could the government possibly be thinking of either adjourning Parliament earlier than the time that is already in the schedule or even contemplating something like prorogation?

Senator Carstairs: I do not know where the honourable senator is getting that idea at all. The Honourable Leader of the Opposition raised the issue of rumours and innuendo that he had heard. I said I could neither confirm nor deny those rumours and innuendo because, frankly, that decision is made by the Prime Minister. Although I certainly admire him, respect him and would like to think I am close to him, he does not confide in me on such issues as whether he will prorogue the Parliament of Canada.

• (2010)

Hon. John G. Bryden: I will direct my question to the Leader of the Opposition in the Senate. If we follow his reasoning, we might not benefit from the experience of this committee, if whatever he imagines might happen does happen. Would it not follow then that we should cancel the plans of any committee that is travelling, from now until this is resolved, in order to make sure that we benefit from what they are doing whenever they travel? Should we be cancelling all of the travel?

Senator Lynch-Staunton: Honourable senators, I am encouraging the travel of the Human Rights Committee to Geneva and Strasbourg. I am happy that it is thinking of going there. I am not too sure about the people the chairman wants to take with her, but that is another question.

I do not like the way the committee came about it. The Speaker *pro tempore* ruled against the point of order. That is fine. I say for the last time — this week, anyway — that we should develop a better procedure, to avoid these fruitless, time-consuming moments of what are really administrative routine matters.

Do I want committees not to travel? I want the contrary. However, I want their travel plans to be known at the time they ask for a certain mandate. I do not want to know about travel plans six months later as an afterthought. That was my only point in the point of order.

As for the committee's timing, it is obviously wrong as far as the Senate is concerned, on the assumption that there is prorogation before the end of the year. Of course, the Leader of the Government cannot comment on that, but we have been through this before. Usually, rumours of prorogation have been proven correct.

Some Hon. Senators: Question!

Senator Maheu: Honourable senators, I would like to advise the Leader of the Opposition that I am appalled at his deputy leader being so against travel for a Human Rights Committee, particularly someone who verbalizes an interest in human rights more than anyone in the Senate.

I can advise honourable senators that, when we first applied for our budget, travel was part of it. Like all committees, our budget was changed at the time because there was not enough money in the budget of the Internal Economy Committee. Travel was indeed there.

Senator Lynch-Staunton: Honourable senators, it is like flogging a dead horse. The point is that in her original mandate she did not ask for travel. The formula I urge on all committees is to come with a request and a budget at the same time. That is all I am saying. When one goes for the original mandate, one should come with a budget and a mandate at the same time so that both may be debated and approved at the same time, so that we can avoid the fruitless, non-productive hours of debate such as we are having now.

Senator Kinsella: Honourable senators, I take it we are resuming the debate on the motion that is before us. I want to participate in the debate on the motion.

If you will read from your Order Paper, the debate is on a 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. That is what we have before us. I have not heard the explication given for this motion by either the mover or the seconder of the motion. Perhaps we should give them an opportunity to explain their motion. If they wish not to explain their motion, I am prepared to make some comments on the motion that is before us.

Honourable senators, the motion is a report that contains three paragraphs and an appendix. It is only by going to the appendix that we learn the purpose of the trip.

I concur with what the Leader of the Opposition has just said in reference to committee work and the principle that committees are servants of the chamber, and that the chamber has the duty to articulate clearly the order of reference it wishes to give a committee. If we have failed to do that in the past, then we have to accept the responsibility.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Therefore, honourable senators, we ought to amend the motion that is before us by amending the fifth report.

I move, seconded by Honourable Senator Nolin:

> That the Fifth Report of the Senate Standing Committee on Human Rights be amended by adding after the words "travel outside of Canada" the following:
>
> MANDATE FOR TRAVEL
>
> 1. The committee shall during its visit to the United Nations office in Geneva inquire into Canada's compliance with the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;
>
> 2. The Committee shall, during its visit to the Human Rights Court of the Council of Europe in Strasbourg, inquire into areas of application of the European Social Charter as a model in Canada; and
>
> 3. The committee shall report to the Senate no later than November 4, 2003.

Honourable senators, speaking in support of this motion, I simply wish to make the point that the work of the United Nations High Commission for Human Rights, which has its headquarters at the UN office in Geneva, contains a number of the top experts from around the world dealing with international human rights. It is very important to note that we as a country are a major party, under international treaty law, to many of the United Nations human rights instruments. As a country we set an example that we can be proud of in terms of setting standards around the world. Therefore, it is in our domestic interest and international interest to be absolutely certain that we as a country are ourselves complying with all the provisions of the international covenants.

It was in 1976, as a result of an initiative begun in 1966, that the United Nations proposed for ratification two special covenants that provided implementation machinery for the rights that the world had recognized in the Universal Declaration of Human Rights, proclaimed on December 10, 1948. It took from 1948 to 1966 for the world community to agree on the kinds of machinery that would be necessary to give effect to the rights that the world community had recognized. They had determined in the process over that period that we need two different sets of machinery, one set for the protection and promotion of civil and political rights, which were more directly justiciable, and a different type of machinery for the implementation of economic, social and cultural rights.

• (2020)

It is important that we say this in this chamber. Honourable senators will recall that a joint committee of the House of Commons and the Senate came into this place and tabled a report at the time of the Charlottetown debate. On page 88 of that joint report, they said that there were no such things as real social rights. They were wrong. Not only are there social rights, but Canada, by ratifying the International Covenant on Economic, Social and Cultural Rights, assumed certain obligations under treaty law to ensure that these social and economic rights were implemented.

We can learn a great deal. This motion to amend the report speaks of our committee's visit to Strasbourg and concentrates more on the European Social Charter rather than the European Convention on Human Rights because we as Canadians do not have the kind of national social charter that many of us think we ought to have. We can learn a great deal about how the European Community, made up of all those different countries, with different domestic systems of governance, was able to agree upon a common social charter that gives effect to the enjoyment of the right to health, the right to education, the right to leisure, the right to work. These are social rights that a joint committee of the

House of Commons and Senate had the audacity to say in a report are not really human rights. They are human rights, and the honourable senators on the Human Rights Committee will learn about them if they ask questions in Strasbourg about the content of our international obligations under the International Covenant on Economic, Social and Cultural Rights.

Honourable senators, Prime Minister Pearson, in 1966, wrote to every province in Canada. We all recall how, in the early 1980s, we learned that there is a certain constitutional convention in Canada that the federal power, internationally, will not be exercised and treaties will not be entered into if the content of those treaties affects the jurisdictions of the provinces without first having the concurrence of the provinces. That is why Prime Minister Pearson wrote to the provinces.

Do you know what happened, honourable senators? By 1976, every jurisdiction in Canada, by letter to the Prime Minister, said, "Yes, our jurisdiction agrees that Canada ought to deposit the instrument of ratification, not to the one covenant on civil and political rights, but also to the economic, social and cultural rights covenant."

Honourable senators, we have had, since 1976, a standard of human rights covering civil and political, economic, social and cultural rights, agreed to in writing by all jurisdictions. It ought not to have been very difficult for us to have gone to the step of looking at a social charter in Canada when we already had the agreement. The ignorance in Canada around the reality of these international human rights covenants spoke loud and clear in the early 1980s when we were trying to elaborate a domestic constitutional Charter of Rights and Freedoms. Many Canadian jurisdictions did not realize that we were already obligated to a standard of human rights agreed to by the provinces in writing, agreed to by the federal government, and executed by depositing the instrument of ratification.

For these reasons, I agree with the Leader of the Opposition in saying that it is critically important for the Human Rights Committee of the Senate to analyze not only the UN system, but that we also learn a great deal from the European system. The committee's visit ought not to be a social gathering. It ought to be focused. Our order of reference should have said that we want our committee to study the covenants with the UN and to learn what it can about improving domestic human rights from the experience of the European Community. It is for that reason that I moved my motion in amendment.

Hon. Senators: Hear, hear!

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

Motion in amendment agreed to.

Hon. John Lynch-Staunton (Leader of the Opposition): The amendment comes from our side, but no copies were distributed. I insist that when an amendment is given, copies should be available for all senators. We are not wasting time here. It is a question of respect for the work of this chamber. Are we to vote?

Hon. Laurier L. LaPierre: Why not introduce the amendment beforehand? You have copy machines like the rest of us.

Senator Lynch-Staunton: Why not address that comment to Senator Gill and others while you are at it?

Senator Kinsella: What is your point?

Senator LaPierre: My point is, what do we do now?

Senator Kinsella: We adjourn the debate and deal with this matter tomorrow.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that the question has been put. The vote has been taken and you have clearly indicated that the motion has been adopted.

Senator Lynch-Staunton has pointed out that we should have had a copy of the motion in amendment before us and that we should have respected the opinions of all senators. I agree completely.

That is the reason we have passed Senator Kinsella's amendment; he is always very well informed. His amendment was exactly right. We have complete confidence in his judgment. We agree completely with what he has said. We are ready for the question on the main motion.

Senator Lynch-Staunton: I would like to know if the chair of the Human Rights Committee accepts the amendment and whether she is ready to commit herself to a fixed date for tabling her report. Until now we have had no such assurance.

[*English*]

Hon. Shirley Maheu: Honourable senators, when we talked about drafting a report upon our return from Geneva and Strasbourg, I said that it would be done as we go. I am well aware of the two covenants, and I am well aware of the two committees. We will be meeting with everyone we possibly can in Geneva and in the European Community.

Senator Kinsella: As chair of the committee, does the honourable senator see any problem with meeting the deadline to report to this house by November 4?

Senator Maheu: No, I do not.

Senator Carstairs: Question!

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

Motion agreed to and report adopted, as amended.

• (2030)

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

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Human Rights (budget—study on the division of on-reserve matrimonial real property) presented in the Senate on October 7, 2003.—(*Honourable Senator Maheu*).

Hon. Shirley Maheu moved the adoption of the report.

Motion agreed to and report adopted.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Do honourable senators agree that all items not addressed be deferred until the next sitting of the Senate in the order in which they appear on the Order Paper?

Hon. Pierre Claude Nolin: Honourable senators, would it be possible to address the last item on the Order Paper, concerning Bill S-20? This item seems to have been neglected for a few days. It has to do with the amendment to the Copyright Act on page 18, Item No. 149.

Senator Robichaud: The Honourable Senator Nolin is referring to the last item on the Orders of the Day, Item No. 149. If there is consent, we could address this item now, defer all other items and move on to adjournment.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I have no objection to all remaining items being stood. We are at Motion No. 149. However, I would like to have some comments placed clearly on the record before we begin to adjudicate upon that matter.

I expect, and I attempted to do by way of consensus yesterday, that the substance of the motion will be adopted. However, if we are now proceeding by way of a formal motion, I simply wish to draw rule 58(2) to the attention of all honourable senators, which reads:

> Where a Senator wishes to correct irregularities or mistakes in an order, resolution, or other vote of the Senate, the Senator shall give one day's notice, and a correction shall not be made unless at least two-thirds of the Senators present vote in favour of such correction.

I take it that this is one of those motions that is operating by virtue of that rule. While I fully expect the motion to be adopted unanimously, I just want it to be understood that had it been a contested vote, it would have required a two-thirds majority.

[*Translation*]

Senator Robichaud: Honourable senators, I agree.

[*English*]

Hon. Joseph A. Day: Honourable senators, I move the adoption of the motion standing in my name.

[*Translation*]

Senator Robichaud: Honourable senators, I am not trying to complicate things. We simply need to be sure that consent has been given for all items to stand until the next sitting of the Senate, all except Item No. 149, of course.

Hon. Marcel Prud'homme: Honourable senators, I am sure that the members of the Standing Senate Committee on Banking, Trade and Commerce will see no objection to having one mandate taken away from them and given to another committee.

The chair of the committee is not here this evening, and we are already pretty busy with the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act.

[*English*]

Senator Day: Honourable senators, I have already spoken to the chairs of both committees. The Banking Committee would normally deal with a patent of invention, which is a type of intellectual property.

[*Translation*]

The Hon. the Speaker *pro tempore***:** Senator Robichaud has suggested that all items on the Order Paper, except Item No. 149, stand in their place until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

[*English*]

COPYRIGHT ACT

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

Hon. Joseph A. Day, pursuant to notice of October 7, 2003, moved:

> That Bill S-20, An Act to amend the Copyright Act, which was referred to the Standing Senate Committee on Banking, Trade and Commerce, be withdrawn from the said Committee and referred to the Standing Senate Committee on Social Affairs, Science and Technology.

Motion agreed to.

[*Translation*]

The Senate adjourned to Thursday, October 9, 2003, at 1:30 p.m.

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Wednesday, October 8, 2003

ORDERS OF THE DAY

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