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**Tuesday, October 21, 2003**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Tuesday, October 21, 2003

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

Prayers.

### SENATORS' STATEMENTS

#### BRITISH COLUMBIA

##### FOREST FIRES

**Hon. Ross Fitzpatrick:** Honourable senators, this is the first time since the Okanagan Mountain Park fire that I have had an opportunity to pay tribute in this chamber to the exceptional valour displayed by the many firefighters, men and women of the Canadian Armed Forces, the RCMP, emergency workers and volunteers who so courageously battled the fire, as well as the Caribou, Chilcotin and Kamloops fires. Although mere words cannot adequately express the admiration and gratitude deserved, I want to formally and publicly thank all of those who did so much to save lives, homes, businesses and property.

Honourable senators, this summer was one of the worst in history for forest fires in my province of British Columbia. A constellation of factors created the conditions for the perfect firestorm in the Okanagan. With hundreds of fires already devastating large swaths of British Columbia, a lightning strike ignited the provincial Okanagan Mountain Park and the resulting fire consumed thousands of hectares of valuable park and forest.

As honourable senators are no doubt aware, Kelowna was a community in crisis. The residents of Kelowna experienced both an economic and emotional ordeal: 238 families lost their homes; many others lost personal property, businesses and jobs; and over 30,000 people, including my family and myself, were forced to evacuate. The environment has been devastated and important heritage sites, such as the Kettle Valley Railway trestles in Myra Canyon, have been destroyed or damaged.

My concern and sympathy has been expressed to those who lost their homes and businesses, and to those who lost irreplaceable personal property. I wish to underline those thoughts here again today.

Honourable senators, I am also proud to say that the people of the Okanagan have a tremendously strong and resilient spirit, and I am overwhelmed by their determination to regroup and to rebuild.

I want to thank members of the government and the other parties who visited the Okanagan at this critical time to offer help and encouragement. In particular, I want to thank my many friends and colleagues in this chamber who took the time to phone or write to express their concern for my family and myself. Your kind words and compassion were greatly appreciated and will not be forgotten.

In closing, I also want to bring to the attention of honourable senators the peril and devastation that the residents of Squamish and Pemberton are currently facing with the horrendous rains and wish them an early respite from the floods. I would also like to express my deepest sympathy to those who have lost family or friends to these floods.

Honourable senators, this has been a difficult year for many people in British Columbia, and I thank you for your support.

#### THE LATE GEORGE R. BAKER

##### TRIBUTE

**Hon. C. William Doody:** Honourable senators, I rise today to bring you some sad news: George R. Baker, a former editor of the *Debates of the Senate*, passed away on Tuesday, October 7, at the age of 82.

Born in Aldeburgh, Great Britain, George served as a bomber navigator in the RAF during World War II. He left the RAF in 1946 as a Flight Lieutenant and Navigation Leader to become a shorthand reporter in the High Courts of Justice. In 1949, George immigrated to Canada and took a job as a court shorthand reporter with the Supreme Court of Ontario in 1950. After leaving the Supreme Court, he remained in touch with his colleagues as a member and, for a period, President of the Chartered Shorthand Reporters' Association of Ontario.

George joined the Senate as a Hansard Parliamentary Reporter in 1959 and became the Editor of the Senate Debates Branch in 1980, where he remained until he retired in 1987. During this time, George Baker was instrumental in forming the Commonwealth Hansard Editors' Association and was a valued supporter of the Hansard Association of Canada.

His Senate colleagues will remember him for his keen sense of humour, and his dedication and faithfulness to his colleagues and those who worked around him. He enjoyed working with senators, and he served the Senate well.

I extend my condolences to his wife, Hazel, his three children, and his many grandchildren and great grandchildren.

#### THE HONOURABLE JOYCE FAIRBAIRN

##### CONGRATULATIONS ON RECOGNITION BY CANADIAN FOUNDATION FOR PHYSICALLY DISABLED PERSONS

**Hon. Consiglio Di Nino:** Honourable senators, on Monday, October 13, 2003, an event was inaugurated to further expose and celebrate the talents and skills of those with disabilities. Conceived by a Canadian sports icon, Mr. Jeff Adams, and Mr. Vim Kochhar of the Canadian Foundation for Physically Disabled Persons, the first annual wheelchair road races — dubbed the Rolling Rampage — were held in Toronto. The event attracted men and women from several countries and was, by any measure, a great success.

• (1410)

I bring this to the attention of honourable senators today to place on the record the enormous commitment to promoting the causes of those with disabilities by one of our own colleagues, Senator Joyce Fairbairn. Her leadership and contribution to this and many other events in support of disabled persons was acknowledged and recognized at the awards ceremonies the next day.

I am sure all honourable senators will join with me in applauding Senator Fairbairn and in thanking her for her tireless dedication to this cause.

**Hon. Senators:** Hear, hear!

## GOVERNOR GENERAL

### STATE VISITS TO FINLAND AND ICELAND

**Hon. Donald H. Oliver:** Honourable senators, Canada, like Finland and Iceland, is a northern country, but far too little is known of the North — the people, their traditions and cultures.

As Canadians, we must cancel and modify our dated views of the North as a wild frontier and a barrier and something that must be crossed, penetrated, overcome, managed or subdued. Those views lead to the marginalization of the North and have prevented our fully accepting and understanding the cultural and environmental contributions of our northern brethren.

Honourable senators, it was with this concept of our northern heritage in mind that Her Excellency the Governor General Adrienne Clarkson led a highly successful state visit to Finland and Iceland — two countries in the circumpolar region of which Canada is a part. As she said, “This east-west pull along the latitudes should be compelling for us as circumpolar people.”

The Canadian delegation of authors, musicians, scientists, architects and many others, as outlined yesterday by Senator Rompkey, explored in Finland with indigenous people, environmentalists, politicians and educators the possibilities that we can stretch our imaginations beyond the margins that have limited us to date. The state tour was designed to revise and refresh our thinking on the meaning of the North and our relationship to it.

Canadians should be extremely proud of the contribution and the efforts of Her Excellency Governor General Adrienne Clarkson and His Excellency John Ralston Saul. They are widely admired and respected around the world for their leadership and for developing a greater understanding of the circumpolar region. They are acknowledged champions in their drive to break down systemic barriers that have too long divided

us. They are proud examples for all of us in their aim to promote our culture and the visual and performing arts of Canada as among the best in the world. Most important to me, Their Excellencies are champions for our Canadian diversity.

As the son of a janitor from Wolfville, Nova Scotia, I was humbled and deeply honoured to be included among the prestigious delegates.

Canada's place in the world has been enhanced under their leadership. As distinguished writers, they have been disciples of Canadian scholarship in both the arts and the sciences.

Before the state visit to Iceland and Finland, bilateral trade flows were comparatively modest. Their Excellencies have been uniquely successful in forging stronger trade and economic ties with every country they have visited. As a trading nation, that is good news for all of us.

Reciprocal state visits are part of their duties. I witnessed firsthand that they discharged these international obligations on behalf of all of us with intelligence and charm.

Honourable senators, I have had an opportunity to read editorials from Finland and Iceland about our visit. Unlike our Canadian media, they have all been positive in their praise for the leadership shown by our Governor General. One editorial said that the visit ensures “that Icelanders will get a unique opportunity to become acquainted with Canadian society and culture.”

Honourable senators, let me conclude by giving an example of the vision of Her Excellency in her address to the Stefansson Memorial Lecture in Akureyri, Iceland, on Monday, October 13, 2003, when she said:

In our northern-ness, Icelanders and Canadians have a potential that still lies untapped, especially in tackling common challenges to our societies. We only need to look to hydrogen-based energy, to genetic research and biotechnology, to protection of the northern environment — its lands and waters and marine life — to see areas where Iceland and Canada can achieve much by working together. That is why we have brought on this state visit a delegation of Canadians who are leaders in their respective fields.

The final leg of the circumpolar tour will take place next year when Their Excellencies lead a distinguished delegation to Norway, Denmark, Sweden and Greenland.

I strongly urge honourable senators to support Their Excellencies as they continue to enhance Canada's place in the world. I was the only opposition member on the delegation. Next time, I hope that all parties will proudly permit their delegates to participate for the good of our country.

[Translation]

• (1420)

## ROUTINE PROCEEDINGS

### HOLOCAUST MEMORIAL DAY BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-459, to establish Holocaust Memorial Day.

Bill read first time.

**The Hon. the Speaker:** 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.

[English]

### ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

#### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Tommy Banks:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit at 6 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

We have witnesses who have long been scheduled for five o'clock, which we could put off until six o'clock today following the vote.

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

Motion agreed to.

### NATIONAL SECURITY AND DEFENCE

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

**Hon. Colin Kenny:** Honourable senators, I give notice that on Wednesday, October 22, 2003, I will move:

That the Standing Senate Committee on National Security and Defence have power to sit at 5 p.m., Monday, October 27, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

## QUESTION PERIOD

### FOREIGN AFFAIRS

#### ASIA-PACIFIC ECONOMIC COOPERATION SUMMIT— PRIME MINISTER—EXPRESSION OF DISAPPROVAL OF MALAYSIAN PRIME MINISTER'S ANTI-SEMITIC COMMENTS

**Hon. David Tkachuk:** Honourable senators, last Thursday, Malaysian Prime Minister Mahathir delivered an offensive, anti-Semitic speech before a summit of the Organization of the Islamic Conference, a speech in which, among other things, he claimed that the Jews ruled this world by proxy. He suggested that Muslims should rise against them for a final victory. When Prime Minister Jean Chrétien met with Mr. Mahathir yesterday at the summit of the Asia-Pacific Economic Cooperation, APEC, they shook hands. Mr. Chrétien said nothing to Mr. Mahathir about his inflammatory words.

My question is for the Leader of the Government in the Senate. Why has our Prime Minister not made his condemnation and the condemnation of his country personally known to Mr. Mahathir?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Prime Minister made his condemnation personally known very quickly when the Minister of Foreign Affairs, Bill Graham, issued a clear statement on the Canadian government's thoughts. As well, the high commission in Ottawa was informed of the position of the Canadian government on Mr. Mahathir's statements.

**Senator Tkachuk:** Honourable senators, other heads of state at the APEC summit have made known to the Malaysian Prime Minister their disapproval of his rhetoric. U.S. President George Bush made it known that Mr. Mahathir's words were divisive and wrong and that they stand squarely against what Mr. Bush believes in. Could the Leader of the Government in the Senate tell us, in the absence of any meaningful censure by our Prime Minister, if our foreign minister will condemn the remarks of the Malaysian Prime Minister in the House of Commons?

**Senator Carstairs:** Honourable senators, the remarks made by the Malaysian Prime Minister were addressed immediately, which is the appropriate response of the Government of Canada. When such remarks are made, the government responds immediately, and this was done not only to the Malaysian government but also to the High Commission of Malaysia.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a supplementary question for the Leader of the Government in the Senate. U.S. Secretary of State Powell reacted immediately to the remarks, but that did not stop President Bush from personally repeating his thoughts more forcefully to Prime Minister Mahathir directly. Why was our Prime Minister not able to follow that example?

**Senator Carstairs:** Honourable senators, to my knowledge, Prime Minister Chrétien did not have a private meeting with Prime Minister Mahathir; President Bush did have such a meeting.

**Senator Lynch-Staunton:** Honourable senators, Prime Minister Chrétien could only criticize a public person in private. He is too hesitant, if not cowardly, to do so in public.

**Senator Carstairs:** The honourable senator and I have a basic disagreement on basic manners. When one is greeting another at an international meeting in a brief period of time, one practices common courtesies, especially when one's position on the other's previous remarks has been clearly and forcefully stated earlier.

**Senator Tkachuk:** Honourable senator, according to a newspaper article I read, a spokesman for the Prime Minister's Office, when asked why Prime Minister Chrétien did not make any comments, said that the Minister of Foreign Affairs expressed the views of the government on that issue. Foreign Affairs spokesman Kimberly Phillips said that Canadian officials called Dennis Ignatius, Malaysian High Commissioner to Ottawa, last Friday to register our condemnation of Mahathir's comments. Exactly what did the Minister of Foreign Affairs say? Did the minister make a public statement and, if so, what did he say?

**Senator Carstairs:** Honourable senators, the only information I have is the statement that Canada strongly condemns these offensive and inflammatory remarks. They were clearly anti-Semitic and intolerant in nature. The Department of Foreign Affairs called in the Malaysian High Commissioner to Canada to register our condemnation of these remarks. That is the method by which we express our dissatisfaction.

**Senator Tkachuk:** Who said that, so that I am clear? I am a little confused and should like the honourable leader to take me through this. First, what did Foreign Affairs Minister Graham say publicly about this matter? Is the leader's quote drawn from the Minister of Foreign Affairs, or is it the quote of a bureaucrat in the department?

**Senator Carstairs:** Honourable senators, Minister Graham said that the remarks were unacceptable.

**Hon. A. Raynell Andreychuk:** Honourable senators, I thought our usual practice was, first, to invite the person who made the comments to retract them and, then, if the individual refused to do so to take action to ensure that our position is noted more tangibly. In light of that, has the Government of Canada requested that the Prime Minister of Malaysia withdraw those remarks? If the Malaysian Prime Minister will not withdraw his remarks, what action will Canada take?

**Senator Carstairs:** Honourable senators, the Government of Canada did what it always does under similar circumstances: It called in the Malaysian High Commissioner to Canada and registered our condemnation of the remarks.

**Senator Andreychuk:** Honourable senators, if there is no response or reconsideration by the Prime Minister of Malaysia, would this lead to a reconsideration of our relationship, attitude toward and working arrangement with the Government of Malaysia, not the people of Malaysia?

**Senator Carstairs:** I hope it would not have an impact on our relationship with the people of Malaysia. It is my understanding that Prime Minister Mahathir will not hold that position for much longer. He has announced his resignation, which will allow us to continue a positive relationship with the people of Malaysia.

**Senator Andreychuk:** I have a final supplementary question. Mr. Mahathir has indicated that he will not stay on, although we do not know whether he will follow through. I surely hope that we are not putting much emphasis on his words. In light of that, what actions will the government take? What analysis will the government make to encourage a more respectful international human rights attitude from the future government of Malaysia?

**Senator Carstairs:** With the greatest respect, senator, I do not think we can do much more than condemn the words of the Malaysian Prime Minister, which our government did immediately.

**Senator Lynch-Staunton:** It was not done face to face.

**Senator Andreychuk:** Are we considering supporting both opposition parties and human rights groups who are also advocating the change of the government in Malaysia, as we do in other countries?

**Senator Carstairs:** Honourable senators, I apologize for asking the honourable senator to repeat the question.

**Senator Andreychuk:** When we know there will be a change in government in another country from a dictatorial regime, we will often support the democratic forces, such as human rights groups, to ensure that this change of attitude prevails. We have been quite candid in our support of opposition and human rights groups against dictatorial, repressive and, in this case, anti-Semitic groups. What will we do in Malaysia about the position of the government?

**Senator Carstairs:** The honourable senator seems to be suggesting something that I think is potentially dangerous — that we will support regime changes in countries when someone makes a remark that we do not like. If the honourable senator wishes, I will bring that comment forward to the government on her behalf.

**Senator Andreychuk:** I have a supplementary on that. We have often taken stands against dictators and repressive regimes in support of democratic forces. Is the honourable leader suggesting that the government has not done that and will not do that?

**Senator Carstairs:** Honourable senators, I am not suggesting any such thing. However, I am suggesting that recently, in the world theatre, presidents and prime ministers seem to think that regime change is the responsibility of democratic countries. I do not think I want Canada to stand for that kind of activity.

• (1430)

**Senator Tkachuk:** I have one more supplementary question to ask because I still do not understand what happened. We have the prime minister of a country making these remarks. The honourable leader says that the Minister of Foreign Affairs, although as far as I can tell he has not said it publicly in the House of Commons or at a press conference, has condemned this action. Then she says that the Malaysian High Commissioner was called on the carpet. Who called him on the carpet and with whom did he actually meet?

**Senator Carstairs:** I do not know either, senator, and I will try to get that information.

**Senator Tkachuk:** How can the honourable senator sit here and claim that objections were made about what the Malaysian Prime Minister said when she does not even know who met with this person?

**Senator Carstairs:** I was informed, and I have informed the honourable senator, that the Malaysian High Commissioner was called in to the Department of Foreign Affairs. If my honourable friend is asking me exactly with whom he met, I cannot give him that information, but I will seek to obtain it.

#### MALAYSIA—PRIME MINISTER'S SPEECH CONTAINING ANTI-SEMITIC COMMENTS

**Hon. Marcel Prud'homme:** Honourable senators, many years ago I had the honour of being invited by former Speaker Charbonneau to travel to Malaysia, where Speaker Charbonneau, an esteemed Speaker and a good friend of all of us, had a very long and interesting discussion. I was with him at that time and with others as well. In no way will I comment on Mr. Mahathir's comments, but I hope that members will not fall into the trap that the National Assembly of Quebec fell into when they condemned the man on a statement that no one had completely read. That is a dangerous precedent.

I should like to draw to the attention of honourable senators the fifty-ninth paragraph that Mr. Mahathir delivered, one that the minister herself should read. Some of what it contains was a great surprise to me, talking about democracy, vigorously attacking the division of the Muslim communities of the world, going in every direction. Rather than having me defending a paragraph or two, I think honourable senators would be enlightened to read the entire speech that was delivered. I have a copy here, and I am having copies made. There are 59 paragraphs in all.

I knew that this was a hot subject. I wish that the Leader of the Government in the Senate would recommend to people, senators included —

**Some Hon. Senators:** Question!

**Senator Prud'homme:** Has the Leader of the Government in the Senate read the entire speech? If so, then tomorrow I will ask her a question.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have not read the complete speech of Mr. Mahathir, but I have read quotes. They were anti-Semitic in nature, and I condemn them.

**An Hon. Senator:** Tell him. Call him up and tell him.

#### AUDITOR GENERAL

##### LEAKS OF ASPECTS OF UPCOMING REPORT

**Hon. Marjory LeBreton:** Honourable senators, I have a question arising from the upcoming Auditor General's report. This question does not require an answer about the contents of the report, and thus I hope the Leader of the Government will see fit to answer it.

As the minister indicated yesterday, the Auditor General's report has not yet been tabled in Parliament. The usual process is that ministers receive an advance copy of the chapters that concern their portfolios so that they can either defend their views or indicate how they will respond to the recommendations. Parliament and the public become aware of the contents of the report after it is tabled in the other place.

Has the government launched an investigation into how the contents of the report found their way into the media with a view to finding out who is responsible? More important, what steps does the government intend to take to protect the integrity of the process?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I have no knowledge of any investigation that has been conducted on the Auditor General's so-called leaked report.

**Senator LeBreton:** Honourable senators, it is well known that the Auditor General's report will be scathing in its criticism of the government. It is also well known that Mr. Martin would prefer that it be released this fall so that the blame will be clearly placed on the shoulders of Mr. Chrétien, rather than released on the eve of a premature election in the spring. Various sections of this report are now in the hands of several ministers, and thus in the hands of their assistants, many of whom are supporters of Mr. Martin. There have been leaks about this report, leaks about their nature; therefore, some of these chapters will be old news by the time the Auditor General's report finally is tabled in November or in February.

Could the Leader of the Government in the Senate assure honourable senators that leaks about the executive aircraft and about Crown corporation sponsorships were not a deliberate act on the part of supporters of Mr. Paul Martin to get the "bad news" contents of this report out sooner rather than later?



**Senator Carstairs:** Honourable senators, the Honourable Senator LeBreton has knowledge that I certainly do not have. I have no knowledge that several sections of the report have been made available to any ministers or to any staff of those ministers, nor do I even know whether it is well known that the report will be scathing. The Auditor General herself has indicated the report will not be ready for tabling until November 25.

**Senator LeBreton:** That is interesting. The minister's own cabinet colleague, Minister Ralph Goodale, was reported in *The Globe and Mail* on Saturday as saying that the sooner the report is out, the sooner we can begin acting on her recommendations, and the sooner the better. The government now has most of these recommendations. It is well known that this is the procedure that the Auditor General follows. The ministers have the report because, as I said, the Auditor General gives it to them so that they can respond. Again, I am not asking the government leader to comment on the specific details of the recommendations, although I know that the Prime Minister is already defending the purchase of jets, so he is commenting on the report.

Most reports of the Auditor General contain recommendations that could have been implemented long ago. It is not unusual for the government to respond by saying that it has already started to work on some of these egregious areas.

What are we to make of all of this? Whether it be reforms to the sponsorship program or an end to last-minute jet purchases, are we to understand that the government will not be acting on any of the recommendations of this report until the day it is formally to be made public?

**Senator Carstairs:** I would hope the government would not act on any report before it is made public. What is the point of saying that we have an independent officer of Parliament if we pre-empt her by responding to her report before she has even made it?

**Senator LeBreton:** The honourable senator has just made my argument. Minister Goodale is quoted as saying that the sooner the report is out, the sooner the government will begin to act. When these reports are tabled, governments always respond that they have already started to take measures to correct these errors. I am asking whether the government has already made a decision about what it will do about future jet purchases or whether it will deal with recommendations regarding government sponsorships?

**Senator Carstairs:** With the greatest of respect, when the minister says "the sooner the better," that does not give an indication that he has seen anything. He is just saying that the sooner the report is ready, the sooner we will be able to take action.

[Translation]

## NATIONAL DEFENCE

### UPCOMING AUDITOR GENERAL'S REPORT— PURCHASE OF EXECUTIVE AIRPLANES

**Hon. Jean-Claude Rivest:** Honourable senators, setting aside the Auditor General's report, can the minister tell us whether it is true

that the government purchased two planes? Could she assure this chamber that all the rules and procedures were followed? This is a question of fact, independent of the Auditor General's report.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** The Prime Minister has never, in any way, indicated anything other than that, first, two planes were purchased some time ago and, second, that all the rules were followed.

[Translation]

**Senator Rivest:** Honourable senators, were all the rules followed, yes or no? This is a question of fact. Does the minister know? Were the rules and procedures for purchasing these planes followed?

[English]

**Senator Carstairs:** The Prime Minister has said yes, all the rules were followed.

[Translation]

**Senator Rivest:** Honourable senators, if the Auditor General says the opposite, does this mean she is wrong?

[English]

**Senator Carstairs:** The Auditor General is scheduled to come forward with a report. When the Auditor General comes forth with her report, we will know what that report says.

## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE— ELIGIBILITY OF FLIGHT ATTENDANTS

**Hon. Edward M. Lawson:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I thank her for the written response on the concern I raised a few days ago about flight attendants. I wish to preface my question by referring to a part of that answer. Here is an explanation of the situation.

Under the EI regulations, when a full-time employee's hours of work are restricted to less than 35 hours per week because of a federal or provincial statute, they are deemed to be insured for 35 hours per week. This has applied to pilots and navigators and flight attendants for all these many years.

• (1440)

As a result of an insurability ruling requested by an employee of Royal Aviation, the Canada Customs and Revenue Agency, or CCRA, determined with Transport Canada that only the flight crew have restrictions. Contrary to our understanding and to that of CCRA, only the pilots and navigators are considered to be flight crew. This is a ridiculous decision, to determine that flight attendants are not flight crew. Ask any pilot, any captain, and they will tell you that the flight attendants are a very important part of the flight crew.

This goes back to the beginning of aviation, when the Wright brothers first created their aircraft. They decided very quickly that, if this were to be a successful commercial mode of transportation, a few "Wright sisters" needed to be part of the flight crew.

Getting to my question, what troubles me is that there are no federal-provincial statutes covering the total hours flight attendants are permitted to fly; therefore, they can only be insured for the actual hours worked and paid. As many honourable senators know, flight attendants are on duty for 13 hours but get paid for six and a half hours. Under this new system, this determination by Canada Customs and Transport Canada, the 40-hour week benefits that they ordinarily would have received are reduced to 22 weeks.

There have been layoffs. There will be more layoffs after the Christmas holidays. These people will suffer accordingly.

I can understand that the Ministry of Transport wants to deal with the problem, so it quickly brings in a crew of public servants. The public servants rush to ensure that the workers are not being overpaid for their benefits, and they get the benefits reduced as quickly as possible. I wish they would use the same speed and alacrity to retrieve the hundreds of millions of dollars that have been overpaid to the provincial governments but which have not come back yet.

Why this haste? Why this approach toward 10,000 or more mostly female employees? This action appears on its face to be anti-women, but I cannot believe the Liberal government would be part of that.

I am also naive enough to believe that the minister would say: In our role of government, our Liberal philosophy, as a ministry, is to take care of and help the people under our ministry and not to hurt them.

While the ministry was working with the CCRA on cutting the benefits, why did the minister not say — and I will bring you to the solution because it is written in here:

There is no federal or provincial statute covering flight attendants with respect to the total hours they are permitted to fly. Therefore, they can only be insured for the actual hours worked and paid.

Until such a federal statute is put in place by Transport Canada, HRDC has no option but to consider the flight attendants' actual hours worked and paid...

**The Hon. the Speaker:** Senator Lawson, I would ask you to frame your question. There are only four minutes left in Question Period, and there are a number of senators who have questions.

**Senator Lawson:** Before doing all these things to reduce the workers' benefits, why did the Ministry of Transport not do its best to protect the workers? The minister has a discretionary authority to bring in a regulation to restore the workers to where they rightfully belong and to see that they are paid their proper benefits.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will forward that representation to the respective minister on behalf of the honourable senator.

## NATIONAL DEFENCE

### PURCHASE OF EXECUTIVE AIRPLANES— CONSISTENCY WITH TRADE AGREEMENTS

**Hon. Michael A. Meighen:** Honourable senators, I want to come back to the matter raised by my colleague Senator Rivest. The Prime Minister has defended the decision to purchase those two executive aircraft on the very last day of the fiscal year because, to quote him, "We had money at the end of the year." That is a wonderful reason.

Will the Leader of the Government in the Senate confirm that if the money had not been used to buy those aircraft, the funds would have been applied to debt reduction? If so, does that mean that the purchase of executive aircraft by this government takes precedence over debt reduction, not to mention the purchase of aircraft that our military so desperately needs?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators will know that, while the previous administration increased the debt load of Canada, debt has been consistently reduced by this government —

**Some Hon. Senators:** Oh, oh.

**Senator Carstairs:** — by billions and billions of dollars. That has been a very positive move in terms of the stability of our economy in this country.

In terms of whether the planes were purchased, yes, they were. Were they purchased at the end of the year? Yes, they were. Were they needed? Yes, they were.

**Senator Meighen:** This government always forgets to mention that debt reduction goes ahead because of the GST and free trade.

**Some Hon. Senators:** Hear, hear!

**Senator Meighen:** Some of my honourable colleagues across the way are so young that they have probably forgotten that those were not Liberal policies. Those were policies that came forward from this side of the house.

In any event, when the Prime Minister's Office goes out of its way to spend \$100 million at the very last minute, over the objections of the Minister of Defence, over the objections of senior officials in other departments and without any competitive bids, what kind of message would the government leader suggest is being sent to lower-level public servants who may be sitting on extra cash at the end of the fiscal year? Should they be thinking of creative ways to make it vanish?

**Senator Lynch-Staunton:** Or committees of the Senate.

**Senator Meighen:** Should they be thinking of creative ways to make it vanish?

**Senator Carstairs:** First, honourable senators, I dispute whether these decisions were made over the objections of any minister of the Crown. Certainly, the jets were purchased. The purchase was made because it was believed to be appropriate for the travel needs of the Prime Minister and the others who use those jets. They were purchased as Canadian products because the Prime Minister believes, as do I, that we should be showing off our ability to produce these planes and not purchasing planes that are not built in this country.

**Senator Meighen:** Obviously, the Prime Minister does not believe that Canadian-made products can win in open competition because he decided not to have a bidding process, that that was the only way the Canadian-made planes could win. I do not think that is so. I think our products can win in open competition. I do not think it is right to subvert the rules that we normally follow.

Can the Leader of the Government tell us if a legal opinion was sought on whether this process was consistent with the internal trade agreement, not to mention our international trade obligations?

**Senator Carstairs:** Honourable senators, I do not know whether a legal opinion was sought. However, it is important that Canadian ministers and, most particularly, the Canadian Prime Minister, show their pride in Canada by flying on Canadian-made products.

**Some Hon. Senators:** Hear, hear!

**Senator Meighen:** It is about time that they did so. I well remember when those planes were in development and the government did not see fit to purchase them and fly them around the world, but that is another story.

If that legal opinion does exist, would the Leader of the Government in the Senate undertake to produce it?

**Senator Carstairs:** Honourable senators, I would suggest that that is not usually the custom, as the honourable senator well knows. When the government solicits legal opinions, they are for the government.

**Senator Meighen:** The Leader of the Government has said that she does not believe that the Minister of Defence objected to the purchase at the very last minute. That is what was reported in the press. That may well be wrong. Could we find out what is the truth?

**Senator Carstairs:** Perhaps honourable senators will find out more about this and about other things when the Auditor General tables her report — when that report is ready to be tabled.

**Hon. Consiglio Di Nino:** Honourable senators, the Leader of the Government in the Senate suggested, and we have all read, that the Prime Minister bought these planes because the money was there; there was money left over.

We have a tradition, particularly in this place, that if money is left over at the end of the year, one does not just look for opportunities to spend it. One does not suggest to one's colleagues that the money be kept back and used for other good purposes. Are there different rules for the House of Commons? Are there different rules particularly for the Prime Minister and his office than there are for this house?

**Senator Carstairs:** Honourable senators, there are no different rules. Legitimately needed expenditures take place in this chamber, and they also take place in the PMO.

[Translation]

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

### HUMAN RESOURCES DEVELOPMENT— ALTERNATIVE FUELS ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answers to Questions No. 29, 30 and 31 on the Order Paper—by Senator Kenny.

### MINISTER OF STATE AND LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS— ANTI-TERRORIST ACT

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 125 on the Order Paper—by Senator Lynch-Staunton.

[English]

## AGRICULTURE AND FORESTRY

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

**Hon. Donald H. Oliver:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 p.m. today after the standing vote, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, there is a vote at 5:30 p.m. Has the honourable senator taken that into consideration?

**Senator Oliver:** I believe I said “after the vote.”

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

**Hon. Senators:** Agreed.

Motion agreed to.

## THE SENATE

### INTRODUCTION OF NEW PAGES

**The Hon. the Speaker:** Honourable senators, we have new pages and I would like to introduce some of them to you today.

The first is Janelle Boucher. She is a native of Monastery, Nova Scotia. She is a second-year student at the University of Ottawa, where she is joint majoring in political science and communication.

[Translation]

David Bousquet comes from Saint-Hyacinthe, Quebec. He is a third-year student at the University of Ottawa in the department of philosophy. He previously served for three years in the Canadian Armed Forces.

[English]

Clinton Unka is a northern Aboriginal from Yellowknife, Northwest Territories. He is currently attending Carleton University in his second year of a degree in political science.

[Translation]

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, under Government Business, under the heading Bills, I would like to begin with Item No. 5, that is, Bill C-34. Then we can continue with Items Nos. 1, 3, 6 and 4.

Of course, there will be a vote on Item No. 2 at 5:30 p.m.

[English]

## 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. Donald H. Oliver:** Honourable senators, in preparing some remarks to participate in this debate, I began by reading and by rereading the remarks of Honourable Senator Carstairs, the Leader of the Government in the Senate, both in May and on October 7. There are two or three key paragraphs that I would like to refresh honourable senators' memories with before I begin my formal comments today.

In one part of her address on October 7, 2003, at page 2031 of the *Debates of the Senate*, the Honourable Senator Carstairs said the following:

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

She then said:

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

On rereading that clause, which the honourable senator says is possibly the most significant change from the original bill, what it does not do is deal with perhaps the most fundamental issue raised in the Rules Committee over many weeks of serious deliberation.

Bill C-34 is described as “An Act to amend the Parliament of Canada Act.” A number of senators did not want to see the commissioner appointed pursuant to an act or a statute but, perhaps, by way of resolution. Here, however, we have, “An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.”

Clauses 1 and 2 of the bill state that sections 14 and 15 of the Parliament of Canada Act are repealed and that the act is amended “by adding the following after clause 20.” Proposed section 20.1 reads as follows:

The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution in the Senate.

Honourable senators, that is the key matter that I should like to deal with as I rise today to speak to Bill C-34 during this second reading debate.

I believe that I come to this debate with some background in this area and a certain degree of knowledge gained while I was involved with the Honourable Peter Milliken, now Speaker of the House of Commons, during a period when we developed a report entitled "Code of Official Conduct." This was the report of the Special Joint Committee on a Code of Conduct, which Peter Milliken and I co-chaired in 1997.

As an aside, honourable senators, after that report was tabled in 1997, the Honourable Speaker Milliken and I were invited to travel to Poland to give a series of lectures on some of the contents of a code of conduct. As a result of participating in seminars with a group of politicians and philosophers in Poland, they liked our draft code so much that that particular code is now the law in Poland. They have adopted the code that was drafted here in Canada by Milliken-Oliver in 1997.

Today, honourable senators, I wish to confine my remarks to an issue that arose during hearings of the Standing Committee on Rules, Procedure and the Rights of Parliament while grappling with the writing of its interim report entitled "Government Ethics Initiative." That is the issue of parliamentary privilege. The question put simply is whether a statutory appointment regime as proposed by Bill C-34 results in parliamentary privileges being trumped so that the activities of the ethics officer or the ethics commissioner, as this person deals with the conduct of parliamentarians, are reviewable by the courts.

A corollary question could be: Does the Charter of Rights and Freedoms trump parliamentary privilege, and will the Charter be applied to the activities of the officer or commissioner, thus giving the courts the role as ultimate arbiter over the meaning, the extent and the application of the privileges of honourable senators? That is the main issue I wish to canvass this afternoon. I believe these questions go to the root of what we are doing here.

• (1500)

I do not question the need, for optics' sake, if little else, of a code of conduct. In fact, we recommended a code way back in 1997, in what is commonly referred to as the Milliken-Oliver report. However, we should be very careful about the method by which the ethics officer is appointed. If we do not do it right, it is my view that it may result in the privileges of senators and the activities of the ethics officer who rules over conduct and privileges being the subject of court adjudication.

Having reviewed the evidence before our own Rules Committee and the relevant court cases involving privilege, I am deeply concerned about how anyone, especially the Leader of the Government in the Senate, can unequivocally say, "Don't worry, parliamentary privilege applies to the activities of the ethics officer, and the courts are excluded."

The fact is that by virtue of clause 20.1 of Bill C-34, the office of the ethics officer is created by statute, outside the *Rules of the Senate*, and somehow it is argued by the government that this does not affect the application of privilege. I am afraid I do not agree.

The 1997 Report of the Special Joint Committee on a Code of Conduct was very conscious of this problem. Indeed, we had lengthy and extensive debate on it, and we had lawyers present us opinions on it. That is why we recommended in the end an ethics officer to be known as a "jurisconsult" to be an officer of Parliament — not a creature of statute but an officer of Parliament — appointed by resolution of the Senate and by resolution of the House of Commons.

We also stated that nothing in the code would affect the privileges of Parliament or parliamentarians or, indeed, the powers of the Speaker of each House. This latter statement was out of an abundance of caution because we felt clearly that an appointment process entrenched in and governed by the *Rules of the Senate* would be subject to all the elements of parliamentary privileges, excluding the courts from determining the nature of our privileges.

Honourable senators, let me be clear about the importance of parliamentary privilege in this context. As every one of you is painfully aware, the Senate has the right to govern its internal operations. There is an important constitutional separation of powers between the judiciary and the legislative branch. A statute-based ethics regime creates a considerable risk, in my opinion, of judicial intervention in the actions of the ethics officer, directly conflicting with the constitutional independence of the Senate and the privileges, rights and obligations of each and every individual senator.

It is no answer, as the government would have us believe, to say, look at clauses 20.5(2) and 20.6(3) of Bill C-34, which both claim that the Senate ethics officer enjoys the same privileges as senators. The key question here is this: Does a statute-based ethics regime invite scrutiny by the courts? If so, this will occur regardless of the wording of these two clauses, which purport to protect, maintain and apply privilege to the Senate ethics officer. If it is open to the courts, it is open to the courts.

Prior to dealing with the applicable case law, I thought it instructive to review the evidence of witnesses given before the Rules Committee and some of the points raised in debate in this chamber as to the effect of a statute-based ethics regime on privileges enjoyed by the senators. Of course, this review leads directly to the discussion of the possibility of judicial interpretation or limitations being placed by the courts on these privileges.

Mr. Brendan Keith, the Principal Clerk of the Judicial Office and Register of Lords' Interests in the House of Lords in Great Britain, explained why, when establishing a code of conduct for the Lords, they did not proceed by statute, using the rules of the House of Lords instead. One reason given was that the Lords view themselves as self-regulating and thus dealing with this subject through the rules seemed more appropriate. However, Mr. Keith went on to say:

There is another reason, I think, why we did not contemplate the statutory route. That is to say, any code of conduct has to take account of the constitutional position. As you know, we have a doctrine at Westminster of parliamentary privilege, a doctrine known as exclusive cognizance, which means essentially that the House is responsible for its own internal affairs, free from interference by the executive and by the judiciary. If you were to take the statutory route, there is just the possibility, shall we say, that you might find yourselves being subjected to judicial review in a way that was not anticipated when the statute was enacted.

He went on to say:

Parliamentary privilege has never been a big issue for the House of Lords. However, it has been a significant issue over the years in the House of Commons. I cannot honestly speak for them, but I am pretty sure they do have some fears as to the possibility of judicial review were statute law to be involved in the appointment, for example, of the Parliamentary Commissioner for Standards.

A similar view was expressed by Professor David Smith of the University of Saskatchewan. Granted, he was talking about a statutory code and a single ethics officer for Parliament in a position established by statute. He states that a statutory code "opens the door wide to judicial intrusion into the work and operation of Parliament. The courts have a vital role to play in protecting the rights and freedoms of Canadians, but so do the country's legislatures, which in the case of Parliament means both of its Houses."

Certainly, the most thorough discussion of privilege and its possible erosion by the ethics regime contemplated by the government came from Professor Dale Gibson, a former professor of constitutional law at the University of Alberta. His testimony has been helpful to the Senate on many occasions, and was again when he appeared before the Rules Committee.

He concluded from the relevant case law that inherent legislative privileges are constitutional norms, whether they are derived from statute or common law. The issue then is the reconciliation between "privilege" and the Charter of Rights and Freedoms. We must take this one step further and deal with their application to the actions of an ethics officer whose office is created by statute with the officer's authority based on statute as well.

Professor Gibson reviewed the leading cases, including the *Vaid* case, and concludes that the judiciary has a responsibility to ensure that the exercise of parliamentary privilege in individual cases is consistent with Charter requirements. In his opinion, the *Vaid* case, being a Federal Court of Appeal decision, supports this more activist judicial role, recognizing that the exercise of

privilege or the claim of privilege may be subject to review by the courts under human rights legislation or perhaps the Charter as well.

These are very serious conclusions offered by a serious academic who has studied this area in detail. If nothing else, his view should act as a counsel of caution, moving us away from utilizing a statute to create the position of the ethics officer.

The concerns I raise here have also been raised by other honourable senators in the debate on the interim report from the Rules Committee. For example, Senator Joyal, in his excellent discussion of the report, dealt effectively with the question of privilege that is squarely before us. He quoted from Mr. Joseph Maingot's work, *Parliamentary Privilege in Canada*, which describes the importance of privilege as it relates to a legislative body:

The privileges and control over its own affairs and proceedings is one of the most significant attributes of an independent legislative institution.

• (1510)

Honourable senators, that is so important I would like to repeat it:

The privileges and control over its own affairs and proceedings is one of the most significant attributes of an independent legislative institution.

Senator Joyal stated that a legislative institution must be the master of its own affairs and the master of its proceedings. One of the crucial components of this is the right to enforce discipline on the members of the legislature. I would argue, as I believe Senator Joyal does as well, that we, as senators, must do all we can to protect these privileges and ensure their exercise does not come under judicial scrutiny, particularly, unwittingly. The best way to do this is to proceed, as did the House of Lords, by initiating a change in our rules to provide for the office of the Senate ethics officer and a code of conduct. For, as Senator Joyal later states, when discussing the entrenchment of an ethics office in a statute:

When it becomes law, it becomes the responsibility of the courts to adjudicate and arbitrate. Even though a clause would be included telling the courts to stay out of this, the jurisprudence is thick where the court takes responsibility.

I cannot think of anything clearer than that.

I would like to turn now to review the most relevant court decisions on the subject of privileges. I know Senator Carstairs attempted to do this when speaking on the interim report to assure us that the privileges of this institution and its members would not be compromised by a statute-based ethics regime. I believe it is important to review the leading cases, the majority and minority opinions, because I believe they provide for us a flavour of judicial activism that, I would argue, could result in judicial interpretation on how we, as senators, exercise our powers and privileges.

For example, in what is sometimes referred to as the leading case in the area, *Donahoe v. New Brunswick Broadcasting*, a 1992 decision of the Supreme Court of Canada, it was found that the privileges of members of the Nova Scotia House of Assembly allowed them to exclude filming of proceedings by the broadcasting corporation with its own cameras. The majority held that the Charter rights of freedom of the press and freedom of expression did not apply, as members were exercising their inherent privilege of determining whether or not filming could proceed. However, this was not how both Justices Sopinka and Cory saw the same situation. Both determined that this exercise of privilege is subject to Charter scrutiny. Mr. Justice Cory went so far as to decide that the actions of the House of Assembly exceeded the jurisdiction inherent in parliamentary privilege and that the Charter rights trumped privilege in this instance.

Then, in 1996, the Supreme Court of Canada in *Harvey v. New Brunswick* dealt with the issue of disqualification from office, which, it determined, fell within the historical privilege of the legislature and was immune from judicial review. It held that parliamentary privilege in this instance enjoyed constitutional status and was not subject to the Charter.

However, in arriving at the decision, justices took several routes. Then Chief Justice Antonio Lamer quoted from his earlier reasons in the *New Brunswick Broadcasting* case as follows:

The legislation that the provinces have enacted with respect to privileges will be reviewable under the *Charter* as is all other legislation.

In the case at hand, he felt that the Charter did not apply and did not have to decide the priority between the Charter and the ancient law of privilege. Applying this reasoning to Bill C-34, we would be faced with the courts reviewing the exercise of our privileges because the ethics officer is statute-based.

Madam Justice McLachlin, now Chief Justice, in her reasons, dealt with both the Charter and parliamentary privilege. She said they were both “constitutional principles of fundamental importance.” She said:

Our object should be to reconcile them in such a way as will preserve both meaningful legislative privilege as well as the fundamental democratic values guaranteed by the *Charter*.

She went on to say the following:

To prevent abuses cloaked in the guise of privilege from trumping legitimate *Charter* interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.

Again, I would argue that the Supreme Court sees a legitimate role for itself in scrutinizing the exercise of privilege, especially if the privilege is exercised pursuant to a statute. That is the key line. The Supreme Court feels it is invited to scrutinize the exercise of our privileges, particularly so if that privilege is based on a statute.

In the case of *Tafler v. Hughes (Commissioner of Conflict of Interest)*, the British Columbia Court of Appeal found that the law of privilege governed, but there were no Charter arguments raised.

The same situation arises in the case of *Morin v. Anne Crawford, Conflict of Interest Commissioner for the Northwest Territories*, a decision of the Supreme Court in the Northwest Territories. Here, the court held that the powers exercised by the Conflict of Interest Commissioner were within the ambit of privilege enjoyed by the legislative assembly, and, as such, the court had no jurisdiction to entertain a judicial review application brought by the aggrieved Mr. Morin. As no Charter issues were raised, no competing claims against the application of privilege, the court followed the *Tafler* decision and did not interfere with the exercise of power by the commissioner.

Contrast the decision in these cases with the two most recent decisions dealing with privilege. In the *Vaid* case, a decision of the Federal Court, the relationship between parliamentary privilege, the courts, human rights legislation, and the Charter was discussed at some length and, indeed, is still being discussed. In this case, the respondent Vaid claimed his rights under the Charter and the Canadian Human Rights Act had been violated. The appellant, Speaker of the House of Commons, argued that privilege extended to the conduct and management of the staff of the House of Commons. The court held that privilege did not apply. The court held that the privilege claimed was not necessary to the dignity, integrity or efficient functioning of the legislature. Alternatively, the privilege claimed did not preclude a review of the necessity to possess and exercise the privilege where there is an allegation of discrimination contrary to the Charter or the Canadian Human Rights Act.

Therefore, there is a distinct possibility that when privilege competes against Charter and Human Rights Act provisions, the claim of privilege will be strictly scrutinized by the courts.

However, the decision that gives us the best reason to pause on the issue of privilege is that of the Supreme Court of the Northwest Territories in the *Roberts* case, a case decided last summer. The facts here are important in that they deal with the attempted removal by the Conflict of Interest Commissioner, who was appointed by a statute with provisions similar to those contained in our own Bill C-34. The assembly claimed its decision to remove the commissioner was protected by privilege, which was the main argument made by Senator Carstairs in her October 7 speech. The court held otherwise, stating the following:

The Legislative Assembly has chosen to circumscribe its area of privilege by statute...

Does the decision in this case, combined with other decisions and minority opinions in Supreme Court decisions, start us down a slippery slope to the point where the actions of a statute-based appointee are not protected by privilege? The judge in this case, who also decided the *Morin* case, said, no.

• (1520)

Honourable senators, here we have a case where the court is quite willing to second-guess the decision of a legislature, stating that privilege can be inadvertently circumscribed by statute, even inadvertently. Surely, the evidence of the witnesses before the Rules Committee, the experience of the House of Lords and the contradictory statements by Canadian courts on the extent of privilege should act for us as a counsel of caution. Surely, we can envisage the appointment, removal or exercise of authority by the Senate ethics officer as being challenged on Charter or constitutional grounds. Surely, we do not want to establish a situation where our privileges are subject to the whim of the courts.

This, honourable senators, can and should be avoided. It can be avoided by establishing the position of ethics officer in our own rules in a fashion similar to that accomplished by the House of Lords.

I thank honourable senators for their attention.

**Hon. Lorna Milne:** Will the Honourable Senator Oliver accept a question?

**Senator Oliver:** Yes, honourable senators.

**Senator Milne:** In the decision of the B.C. Court of Appeal in *Tafler v. Hughes*, Mr. Justice Lambert stated:

In my opinion, the privileges of the Legislative Assembly extend to the Commissioner who is expressly made an officer of the Assembly by sub-section 10(1) of the Members' Conflict of Interest Act. In my opinion, decisions made by the Commissioner in the carrying out of the Commissioner's powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts.

Is it the contention of the honourable senator that the courts will ignore this clear interpretation of a similar statute in the B.C. Court of Appeal?

**Senator Oliver:** Honourable senators, it is certainly not the Supreme Court of Canada. We know very well the clear position of the Chief Justice of the Supreme Court of Canada. We know very clearly the position of Mr. Justice Cory and other judges of the Supreme Court of Canada.

The Supreme Court of Canada is the court of highest authority in Canada, not a court of a particular province.

**Senator Milne:** Senator Oliver is right, it is not the Supreme Court of Canada. However, in the decision of the Supreme Court of Canada in *Harvey v. New Brunswick*, Chief Justice McLachlin stated:

The history of the prerogative of Parliament and legislative assemblies to maintain the integrity of their

processes by disciplining, purging and disqualifying those who abuse them is as old as Parliament itself. Erskine May, writing in 1863, stated this in his *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*.

Is the honourable senator suggesting that, perhaps, the Chief Justice is likely to change her mind on this issue?

**Senator Oliver:** That is not her only pronouncement on the issue of privilege. As the honourable senator is well aware, a number of professors who appeared before the committee chaired by Senator Milne quoted a number of authorities in the Supreme Court of Canada, in particular, Chief Justice McLachlin where she made her position abundantly clear. She feels that whenever there is a Charter issue, an issue under the Human Rights Act and an issue also arising from the privileges of a member of a legislature or of Parliament, then those privileges are trumped and that the Charter and human rights legislation prevail.

That is the reason for my concern. Her position is very clear — parliamentary privileges are ancient, they had a lot of significance in the olden days and they have less so now. That is because before 1982 we did not have a Charter. A number of court decisions indicate that the Charter prevails.

**Senator Milne:** The present Chief Justice also noted in *Harvey*:

Parliament and the legislatures of Canada are not confined to regulating procedure within their own chambers, but also have the power to impose rules and sanctions pertaining to transgressions committed outside their chambers.

Later, she stated:

The power of Parliament and the legislatures to regulate their procedures both inside and outside the legislative chamber arises from the *Constitution Act, 1867*. The preamble to the *Constitution Act, 1867* affirms a parliamentary system of government, incorporating into the Canadian Constitution the right of Parliament and the legislatures to regulate their own affairs. The preamble also incorporates the notion of the separation of powers, inherent in British parliamentary democracy, which precludes the courts from trenching on the internal affairs of the other branches of government.

What leads the honourable senator to believe that the courts will in any way try to upset this balance?

**Senator Oliver:** Nothing is clearer than the language of the Chief Justice herself. She said, and I repeat:

To prevent abuses cloaked in the guise of privilege from trumping *Charter* interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.

[ Senator Oliver ]



The Chief Justice is stating that whenever an issue comes before the court in which the privileges of legislators or parliamentarians arise, and there is also a competing claim, perhaps under the Charter of Rights and Freedoms or under human rights legislation and it is there by virtue of statute, they will not hesitate to look at it, and that the privileges are trumped by the higher rights under the Charter and the Human Rights Act.

If we are interested in trying any longer to protect the privileges of Parliament, it seems to me that we, therefore, have an obligation to do so in a way that confines to this chamber our right and our ability to control the definition and scope of these privileges and define them ourselves.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I commend Senator Oliver for his comprehensive statement, which is consistent with what is set out in the Oliver-Milliken report.

I take it that the Honourable Senator Oliver, in conjunction with Mr. Milliken, spent a considerable amount of time studying this question.

**Senator Oliver:** Yes, we did.

**Senator Grafstein:** I take it as well that the government ignored your recommendation on this point.

**Senator Oliver:** In 1997, the report was tabled in the House of Commons and the Senate. Parliament then prorogued. Thus, it died with the prorogation.

The fact that there is not a provision in Bill C-34 to have the commissioner appointed by joint resolution, or by resolution of each House, means that that part was in fact ignored, notwithstanding the study we had given it.

**Senator Grafstein:** I take it, then, the government ignored the recommendation, insofar as it applies to this chamber, in that rules should prevail in terms of dealing with this issue as opposed to following a statutory route. Is that so?

**Senator Oliver:** That is correct.

**Hon. Anne C. Cools:** Honourable senators, I would like to thank Senator Oliver for his broad review of the situation. I want to question him as to whether or not he has reviewed other related matters.

From the substance of what Senator Oliver has said, it is clear to me that he is aware of the movement afoot in the courts and elsewhere, in particular the cabinet, to limit the privileges of Parliament primarily to freedom of speech, supposedly, on the floors of the chambers. In addition to that, he is aware of the forces at work in the executive to reduce the privileges of Parliament, the law of Parliament, to nothing other than a set of mechanical rules, such as setting out the amount of time a senator can speak, when really the privileges are about the ancient and grand law of Parliament.

• (1530)

I am impressed that Senator Oliver is aware of those war drums that are beating. For example, I recently reviewed a list of the privileges of Parliament. One never sees, for example, the privilege of being representatives. After all, to debate, to consider, to represent the Queen's subjects is certainly the first privilege. It takes an extraordinary step of naiveté to believe that anyone can create these bureaucracies within Parliament and that these issues will not come into collision.

Senator Oliver has done an extensive review of the judgments in the case. Could he tell the Senate about the case in which the *Ottawa Citizen*, *Southam*, I believe it was, sued the Senate? In the court of first instance, the case was heard by Mr. Justice Strayer. In his judgment, Mr. Justice Strayer did not bow and scrape before the privileges of the Senate or of Parliament, as Senator Milne is suggesting that judges do. He had quite a bit to say. In appeal the matter went before Mr. Justice Iacobucci, I believe. Has Senator Oliver looked at those judgments? Those two judgments, particularly that of Mr. Justice Strayer, are a sound indication of where certain members of the judiciary want to go with privileges. If Senator Oliver has not reviewed those, I will understand, because no one has yet mentioned them.

As a subsidiary to my question, yes, everyone cites *Donahoe*, and Senator Oliver rightly referred to the opinions of Mr. Justice Sopinka, and I believe it was Mr. Justice Cory, who stated in their judgments that the privileges of Parliament were very much subject to the Charter of Rights. That was the disagreement between the two sets of Supreme Court of Canada judges.

The important point here, honourable senators, and the fact of the matter is that in *Donahoe* the opposite opinion was prevailing right up to the final court. In the courts of first and second instance, they did not uphold our privileges. It was at the Supreme Court that the privileges of Parliament were upheld, with Madam Justice McLachlin taking the lead, even though some Supreme Court judges disagreed.

Therefore, the matter of our privileges is not safe and sound at all, and I think that this kind of legislation, Bill C-34, is folly and unwise. I do not understand how we can allow ourselves to be placed in this position because the real question at the end of the day is the proper relationship between the high court of Parliament and the lower courts, especially the Supreme Court of Canada, which was created by a statute of the high court of Parliament. Some of the subject matter is growing not only arcane but also increasingly less known to members of Parliament, and that is a terrible situation.

Could Senator Oliver comment on the fact that in the *Donahoe* case the opinion that nearly prevailed was the opinion that did not uphold our privileges?

The fact of the matter is that the privileges of Parliament won out, but just barely. Anyone who says that the courts are strongly upholding and defending the privileges of Parliament is not entirely accurate. It takes a fair amount of reading between the lines.

Could the honourable senator comment on those two matters?

**The Hon. the Speaker:** I wish to remind honourable senators that there are about four minutes remaining of Honourable Senator Oliver's time and I have one other questioner.

**Senator Oliver:** First, I have not read the *Southam* case.

I do know that since 1982, with the Charter, we are now seeing in the courts, more than at any time since 1867, great new judicial activism. As a result of that activism, it is my opinion that it would be prudent for this chamber to protect the long-standing privileges of this house by doing what it can to ensure that judicial activism does not take over and control and define them.

**Hon. Richard H. Kroft:** Honourable senators, from reading all the cases, I find it would take incredible naïveté to think that the courts are not looking for every possible opportunity to intrude on privilege. One would have to have a strange way of reading not to find that obvious in the judgments.

Would the honourable senator not agree that we should not put all our weight and reliance only on the point of court intervention? The honourable senator repeated one portion of his speech for emphasis, that being the positive value of having this chamber in control of its own rules and proceedings. I understood the honourable senator to mean, and I would like him to affirm it from his long experience with this subject, that the potential for court intervention is in itself a positive value to which this chamber should pay a great deal of attention in considering this legislation.

**Senator Oliver:** I agree entirely with Senator Kroft and I cannot state it better than he just did. This chamber must be the master of its own destiny and all that comes before it. There is no need for us, in keeping with the traditions of parliamentary privilege, to extend it to the courts or to any other group. It has been a long-standing tradition in terms of the definition of our privileges, so I could not agree more.

**Hon. Marcel Prud'homme:** Honourable senators, I would like to thank Senator Carstairs for having referred to some of us as the elders. I worked on the subject so many years ago that I cannot remember today when it was, along with Senator Stanbury and Mr. Blenkarn from the House of Commons. The matter died out because of elections.

One of my most important requirements, if we were to have that kind of system, was that we ensure that whoever was appointed be perfectly bilingual, since very private matters would be discussed with that person. Does Senator Oliver share the opinion that, regardless of the ethnic origin of the candidate, members must be at ease with the person who is ensuring that we abide by the rules?

**Senator Oliver:** I thank the honourable senator for his question.

It is a prerequisite that anyone who should be appointed pursuant to section 20.1 of the Parliament of Canada Act under the Great Seal, after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate, be bilingual.

• (1540)

**Senator Prud'homme:** Another very short question. I will not make any speech on this subject. One thing that always troubled me in the House of Commons — and it should be troubling to honourable senators — is when we speak vaguely, “with consultation with opposition leaders.” I have always disagreed with that. I always try and always fail, but I will try again and again to say “after consultation and approval.” I have seen rather quick consultations done over my 40 years. The consultation often just involved a telephone call. Let us say Senator Tkachuk is the leader of a new party and that he is being called by the Prime Minister —

**Senator Oliver:** Do you know something we do not?

**Senator Prud'homme:** I used him as an example because he was listening to me. Let us imagine that the Prime Minister said to Senator Tkachuk, “I want to inform you that Senator Nolin will be appointed to such-and-such a position.” The Prime Minister, therefore, could say to the House that he consulted with Senator Tkachuk. I have always objected to that, even though I have great respect for the deputy chair of the Banking Committee.

Do honourable senators not believe that ultimately we will have to reflect on the definition of “consultation”? There should be more than consultation in appointing individuals to such sensitive, high positions as officers of Parliament. If you use the word “approval,” then there could be a boycott. However, there should be more than simple consultation, because that has never been defined for every officer. I can quote many different officers who were appointed after consultation that was very brief and short — like it or not, that was it.

Does the honourable senator have any opinions on this matter?

**Senator Oliver:** It seems that there are five positions or bodies for which there must be consultation today, such as the privacy commissioner, the chief electoral officer and so on.

I do know from practical experience that there was consultation on two occasions on the appointment of a chief electoral officer, and it was a genuine consultation. In the past it has worked.

On motion of Senator Joyal, debate adjourned.

[Translation]

## PUBLIC SERVICE MODERNIZATION BILL

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

On the Order:

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

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

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

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

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

And on the sub-amendment of the Honourable Senator Di Nino, seconded by the Honourable 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 subparagraphs 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.”.

**Hon. Pierre Claude Nolin:** Honourable senators, I will try to be brief and specific. First, I want to thank Senator Beaudoin for his amendment, the aim of which is to strengthen and reinforce the principles of this bill.

I would also like to thank Senator Di Nino for his sub-amendment, which is designed to prevent public service managers from tailoring job descriptions to the desired candidate when a competition is posted.

Honourable senators, if I understand Senator Di Nino’s sub-amendment correctly, it is a question of preventing this type of practice and ensuring that competitions are impartial and respect the principles in this bill.

[English]

The government would have us believe that there will never again be another manager like the former privacy commissioner. We cannot assume that the personal hell lived by employees of that office will never again be experienced anywhere in the government.

[Translation]

Some honourable senators spoke to Bill C-25 when it was being studied and tried to convince us that amendments were not necessary since public service managers would respect the spirit of the bill.

I will draw a parallel that some might consider shaky. The vast majority of Canadians respect the values set out in the Criminal Code. Unfortunately, a few thousand of them do not respect these values and every year they commit one offence or another.

That does not mean Canadians are criminals. Despite our efforts, there will always be people who will go against the wishes of the majority. Similarly, most public servants are going to comply with the bill but, unfortunately, a handful will not. Senator Di Nino’s sub-amendment is designed to prevent this type of practice.

[English]

Let me stress that I am talking about the handful of people who do not think that the rules apply to them. Most public servants at all levels are decent and honourable people. The few that are not can create, on the other hand, no end of problems for those around them. However, this bill is written on the assumption that all managers will always behave, because they must always live with the consequences of all of their actions.

Perhaps they must live with the consequences of their actions, but only if they are caught. Nobody ever expects to be caught.

[Translation]

Obviously managers who ignore the principles of this bill will do so because they are sure they will not get caught.

[English]

Even when the few that do go astray are caught, heads rarely roll. The fact is that the former privacy commissioner was not acting alone. That is one of the problems. He was acting with the cooperation of his senior management team. He was acting in spite of the fact that both Treasury Board and the Public Service Commission knew there were problems.

• (1550)

Can you imagine what will happen when the controls that do exist are weakened?

I should like to share with honourable senators a letter that appeared in the *Ottawa Citizen* on Friday, October 3, 2003, from Mr. Chris Rogers, President of the Public Service Alliance of Canada local at the National Library and Archives. He writes:

The recent revelations of what staff of the Office of the Privacy Commissioner rightly refer to as George Radwanski's "reign of terror" should be a wake-up call. Under the proposed Public Service Reform Act, Mr. Radwanski's abuses, as reported by the auditor general's office — cronyism, favouritism, extravagance, abuse of authority and misuse of the taxpayers' money — will be repeated a thousandfold.

Managers will be far less accountable in their staffing actions, and the right of employees to appeal appointments will be greatly reduced. The so-called "merit principle," which is supposed to govern staffing in the public service, has been seriously eroded in recent years. The proposed legislation reforming the public service will only make the situation far worse. It should be scrapped.

Why has the government ignored a number of positive recommendations in the Fryer Report, which examined many aspects of the public service and concluded that redress mechanisms need to be implemented to protect some basic rights of government workers?

[Translation]

Honourable senators, public servants, who work for the Government of Canada, and their union representatives, are asking for our help. They are looking to us.

[English]

The current government is setting a time bomb that will likely blow up toward the end of the next government's first mandate.

[Translation]

Some senators opposite actively support Paul Martin, our future prime minister.

[English]

Several senators opposite are known to be strong supporters of Mr. Martin. They may want to call him tonight or this afternoon to say: "Paul, three years from now we could have Radwanski style headlines every other day. Do you have a problem with that?" If the answer is yes, and it should be yes, then they may want to say yes to both the amendment and the sub-amendment.

**The Hon. the Speaker:** Is the house ready for the question on the sub-amendment of Senator Di Nino?

**Some Hon. Senators:** Question!

[ Senator Nolin ]

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

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the subamendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it.

*And two honourable senators having risen:*

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

**Hon. Terry Stratton:** Honourable senators, I would like to defer the vote until 3:30 p.m. tomorrow.

**Hon. Bill Rompkey:** If there is agreement, we could include this vote at 5:30 p.m. with the other vote, which would make it simple for all honourable senators.

**Senator Stratton:** I wish to defer the vote to 3:30 p.m. tomorrow with a half-hour bell.

**The Hon. the Speaker:** Is it agreed, honourable senators, that the vote will be at 3:30 p.m. tomorrow with a half-hour bell?

**Hon. Senators:** Agreed.

## AMENDMENTS AND CORRECTIONS BILL, 2003

### POINT OF ORDER

On the Order:

Second reading of Bill C-41, to amend certain Acts.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order based on a technical matter that I think is important. The long title of the bill is not at all indicative of the content or the nature of the bill. The long title, "An Act to amend certain Acts," is meaningless and misleading, so much so that Bill C-41 cannot proceed at this time. A long title is meant to indicate as clearly as possible the intent of the proposed legislation. No less an authority than Beauchesne's 6th Edition, citation 626(2) states:

Some of the constituent parts of a bill are essential, some are optional. The title is an essential part, the preamble is not.

The reason behind this is clear. Anyone following legislation must, by reading the title of a bill, be able to determine its purpose and act accordingly. Bill C-41's title violates this basic procedure. I will quote Beauchesne's again, citation 627(1):

...The long title sets out in general terms the purpose of the bill. It should cover everything in the bill.

I will repeat that because it is an important point: "It should cover everything in the bill."

This requirement is reiterated in Erskine May, Twenty-second Edition, page 462. The long title of Bill C-41 does not fulfil this basic requirement. All we know from the long title of this bill is that it will amend certain acts, none of which are specified.

Ironically, honourable senators, on February 10, 2000, the Government House Leader and sponsor of the bill in the other place said the following in response to a point of order on the title of the clarity bill:

The reference here is that if we have a bill that amends an existing law it must state in it which existing law it amends. Therefore, if we did not have that, there would be no way of reconciling the bill with the statute to which it will be later appended.

In this case, there is not a hint in the long title of which existing laws are being amended. There is not even a suggestion as to the unifying theme that connects the amendments or the acts being amended, for as Beauchesne also says in citation 626:

...there should be a theme of relevancy amongst the contents of a bill. They must be relevant to and subject to the umbrella which is raised by the terminology of the long title of the bill.

On May 6, 1971, the Deputy Speaker in the other place confirmed this point in a ruling in which he said:

It is, of course, a matter of judgment in each case as to when a bill offends to the point that it should be ruled as unacceptable because it contains disparate matters.

With the long title of this bill, the government has discarded centuries of established procedure in one fell swoop. In short, the long title of this bill being defective, the bill cannot proceed to second reading until it is amended to conform with long-accepted procedure.

Beauchesne also notes in citation 627 that the long title may be amended if amendments to the bill make it necessary. However, Beauchesne does not appear to have contemplated the possibility that a bill would arrive before the chamber in such a pitiful form that it would require repairs before any amendments were proposed.

Let me quote former Speaker Sauvé from her ruling on July 30, 1982, in the *Debates of the House of Commons*:

The long title sets out, in general terms, the purposes of the bill and should be amended only if and when amendments of substance are made to the bill which would necessitate as a consequence changes to that title. For the benefit of the honourable member, I refer him to

page 465 of May's which reads in part: "Both the long title and the short title are amended, if amendments to the bill make it necessary."

Mr. Elmer Driedger, a former Deputy Minister of Justice, Professor of Law at the University of Ottawa and a leading authority on legislation, in his book *The Composition of Legislation, Legislative Forms and Precedents*, wrote:

A long title is now an indispensable part of a bill or a statute.

...The title, therefore, must accurately define the scope of the bill, and an amendment is out of order unless it falls within the scope as defined in the title.

Therefore, an amendment dealing with any statute of Canada could be introduced to Bill C-41 because the title is so vague. Is this the government's intention?

In addition to the long title of the bill being so vague as to be virtually meaningless, it seriously misrepresents its actual content. Bill C-41 includes a provision which, in fact, is not an amendment to any act. I would draw the attention of His Honour to clause 28, which proposes a significant alteration to the Consular Fees (Specialized Services) Regulations. This clause has absolutely nothing to do with amending an act. There is not a word — not even the vaguest hint — in the long title of the bill of amendments to regulations. The consequence is that only the drafters and sharp-eyed legislators would have any reason to be aware, or even to suspect, that this particular amendment is in the bill. This is wrong and certainly procedurally unacceptable.

• (1600)

It has been pointed out in this chamber that it is essential that the public have a clear opportunity to raise concerns about any legislation being considered by Parliament. They can only do so at the outset if a title is clear and complete. Elmer Driedger, in his book, *A Manual of Instructions for Legislative and Legal Writing*, writes:

The law is necessarily complicated. The challenge to draftsmen is not to simplify the law into short dos and don'ts; that cannot be done. The challenge is to make the law more presentable and comprehensible. That can to a large extent be done by language alone...

The language used in the long title of this bill does not give anyone any sense of what is being amended or corrected. Not only that, it actually misleads the reader as to the contents of the bill. The summary of this bill states that the bill amends and makes corrections to certain laws of Canada, but what laws?

In recent memory, I cannot think of one bill that has been before this chamber that has provided so little information about its purpose. Even a bill brought in under the rubric of "miscellaneous statute law amendments" specifies that it is to correct anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature.

The government claims that a similar bill was introduced in 2001 to correct a variety of statutes. We looked for this similar bill, and the closest we could find is Bill C-43, to amend certain acts and instruments and to appeal the Fisheries Prices Support Act. At least this bill noted that it was repealing an act and amending other acts and instruments.

In fact, verifications were made throughout the Commonwealth to find a similar bill using this form, and we have failed to find one single example. This is not a miscellaneous statute amendment bill where clear guidelines are available for all senators to review.

In addition, Bill C-41 has a Royal Recommendation attached which, in itself, carries an implication that there are matters contained within that go beyond the merely technical.

Your Honour, Bill C-41 is out of order, as it does not conform to any established drafting rules insofar as the long title is concerned. I would quote Erskine May, 22nd edition, to answer the question of what is to be done:

Where the title of the bill as presented to the House refers to purposes which are found not to be mentioned in the clauses of the bill submitted for publication, the proper course is to withdraw the original bill and present a new one with an appropriate long title.

This bill has two difficulties with its long title. First, it has the reverse problem in that the title is completely lacking in informative value. Second, it also has purposes not mentioned in the long title, notably changes to regulations. The proper course is for the government to withdraw this bill, and in doing so, one would hope that new bills to accomplish the same purposes would not be presented in an omnibus form, as was this one, and that they would have accurate long titles.

In the preparation of your ruling, Your Honour, I urge you to consider the long title of Bill C-36, which is presently on the Order Paper in the other place. That bill has 57 clauses in 21 pages and calls for the merger of the National Library with the National Archives. Two of the 57 clauses have nothing to do with a merger, but are proposed amendments to the Copyright Act, and the long title reflects this. Bill C-36 is long titled: "An act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence." One can question why amendments to the Copyright Act are included with a subject matter completely foreign to it, but that is a debate for another day. The point is that the long title indicates its provisions. Had these amendments been included in Bill C-41, however, they may well have gone largely unnoticed, emphasizing again the necessity to have a descriptive long title and not a meaningless and misleading one, as we have with Bill C-41.

For these reasons, I urge you, Your Honour, to confirm that the Senate cannot begin second reading debate on this bill.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I rise today to speak to Senator Lynch-Staunton's point of order. He is obviously correct when he says that Bill C-41 is

entitled, "An Act to amend certain Acts." The very fact that it indicates that it is a bill to amend certain acts would obviously lead a judicious reader to the table of provisions which indicates the short title, and each of the acts that the bill purports to amend. Those acts are listed as follows:

Amendments to the *Canada Customs and Revenue Agency Act*  
 Amendments to the *Customs Act*  
 Amendments to the *Financial Administration Act*  
 Amendment to the *Importation of Intoxicating Liquors Act*  
 Amendments to the *Lieutenant Governors Superannuation Act*  
 Amendment to the *Modernization of Benefits and Obligations Act*  
 Amendments to the *National Round Table on the Environment and the Economy Act*  
*Parliament of Canada Act*: retroactive coming into force  
 Amendment to the *Salaries Act*  
 Amendments to the *Supplementary Retirement Benefits Act*

Consular Fees (Specialized Services) Regulations

Retroactive coming into force

Coordinating amendments

*Lieutenant Governors Superannuation Act*  
*Bill C-25*

Then it moves on to "Coming into force."

Any judicious reader of a bill which says "an act to amend certain acts" would turn to the table of provisions to identify those acts.

In addition, honourable senators, we recently had two sets of bills which were similar in nature to Bill C-41. Some of those bills are called "Miscellaneous Statute Law Amendment Acts," which again do not in the title indicate all of the miscellaneous statutes that would be amended by the particular bill.

We have had some discussion of Miscellaneous Statute Law Amendment Acts in this chamber because it was our understanding that these proposed amendments would be totally non-controversial in nature. Often, our Legal and Constitutional Affairs Committee has carefully examined these bills in advance and, if they identified any provisions which they thought to be confrontational or of a nature that would require a great deal of debate, they would inform the government of such, and those particular provisions would be removed from the bill. The bill would then be submitted with only those provisions that were considered non-controversial in nature.

The bill that resulted from that process became known as a technical corrections bill. In fact, Bill C-41 is a technical corrections bill. It is a bill to amend certain acts, but because it is not a Miscellaneous Statute Law Amendment Act, it would, by its very nature, contain some controversial portions.

There is no authority, I would suggest, Your Honour, for the assertion that the title must be relevant to each and every clause, and there is no authority for the assertion that the title must elaborate on each and every clause, and there is no precedent or authority to sustain, in my view, the alleged point of order.

**Senator Lynch-Staunton:** It is not an alleged point of order. It may, in fact, be sustained.

• (1610)

**Hon. Anne C. Cools:** Honourable senators, we seem to be in a most artificial situation whereby, as a country and as a Parliament, we are expecting a change in leadership in the next little while and a new Prime Minister. The agenda of Parliament should have been slowed down and made to accommodate the fact that these political events are occurring. Historically, we used to have situations leading up to leadership conventions whereby the parliamentary agenda would slow down. What we have here is an extremely heavy and increasingly packed legislative agenda. I would submit that, somehow or the other, this is causing some of the problems.

Honourable senators, in all sincerity, and as a person who has done a lot of canvassing — and I have run in elections and have done everything that can possibly be done — usually three weeks before a leadership convention Parliament tries to release its members to pursue their politics in the ridings, to get support from delegates and to build support for the new leader at the convention. Here, however, we are in a contrary situation, which is very unusual. We have an overburdened, slavish agenda where closure or time allocation is being invoked and pressure is on members of Parliament to vote early and fast and get it done. That is a peculiarity in this particular Parliament. Perhaps that is the reason why these bills are coming faster, are being hastily written, improperly conceived and so on. I do not know.

What I do know, honourable senators, is that there is a great deal of authority that bills are supposed to take a particular form. We must remember that that authority has a long and ancient history which has evolved over several hundreds of years. There was a time when bills were sort of an amorphous piece of paper with much written on it — usually petitions, grievances and the redresses which were granted. Over a couple of hundred years or so, bills have essentially taken the form that you see them in today. These forms are not to be taken lightly.

Today, we have a well-established tradition regarding the designated form of bills, as Senator Lynch-Staunton has pointed out; for example, title, preamble, enacting clause, clauses or provisions, and so on. I do not think that anyone can say that we do not have a right to expect bills in this form. Beauchesne's tells us, in citation 627, under the subject matter "Long Title," the following:

The long title sets out in general terms of purposes of the bill. It should cover everything in the bill.

It would be hard to argue that the title of Bill C-41 covers everything in the bill. However, the real point is one of my hobby horses, and I am really grateful to Senator Lynch-Staunton for raising it. How we do business in these Houses is part of the grand and ancient law of Parliament. The funny thing about bills is that a bill is a peculiar parliamentary instrument. In addition, it is a joint instrument that is shared by the joint law of Parliament. That is, it takes the House of Commons, the Senate of Canada and Her Majesty the Queen at the end to bring about an act. A bill, after all, is an incipient act. This is where there is so much difficulty, because basically a bill is a draft act.

Honourable senators, the propositions and the suppositions by which bills move through the two chambers are part of a shared ancestry and part of a shared law. It is a curious thing that although each House of Parliament is an independent body and master of its own proceedings they are both masters of their own proceedings under one joint law, which is called the law of Parliament. To that extent, Senator Lynch-Staunton is absolutely right and there is a valid point of order.

We must remember that it is not good enough to say, "This bill came here to us from the House of Commons and it says 'passed.'" I submit to honourable senators that this Senate chamber has the duty, at all times, to ensure, review and study and, to use the words of Senator Carstairs, be judicious readers. We have a duty to be judicious readers and to make sure, at all times, that the House of Commons, in sending us bills for consideration, is not unilaterally amending the ancient laws of Parliament at the same time or is not attempting to bind us to sloppy practice or incomplete or unconstitutional practices. I do not know why this bill is proceeding in this way. I do not know much about the substance of the bill itself, but I do know that legislative drafters and parliamentarians are supposed to pay extra attention and care in the production of omnibus bills or bills that are purporting to amend several acts.

Therefore, I would submit, honourable senators, that there is no parliamentary body outside of us that can stand and say, "The House of Commons did not act properly or that the Senate did not act properly." To the extent that there is a shared law and a shared Constitution between the two of them, each House has the duty to ensure that the other house is respecting the first house's or the second house's proper constitutional role and is attempting to abide by the constitutional practices that govern how bills are produced, how bills are passed in each chamber and, most important of all, the form, communication and substance they take.

Honourable senators, I submit that there is some basis to Senator Lynch-Staunton's point of order and that this chamber should be diligent and vigilant about the bills it receives for consideration and, quite frankly, the claims about bills that are quite often made. We are no longer in an era where bills are read page by page as they used to be. Sometimes we are asked to adopt bills at first reading when there is not even a bill before us.

Honourable senators — and, especially His Honour — I think this chamber and the members of this chamber should take their work very seriously.

**Senator Carstairs:** Honourable senators, I want to add one piece of information, and it is short. In the last session we dealt with Bill C-40. That bill's description was "An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect." That bill went on to amend 37 statutes, and none of them were identified in the title.

**Senator Lynch-Staunton:** Honourable senators, the description was sufficient enough that one could understand what was intended. Second, there was no Royal Recommendation to that bill nor to any technical omnibus bill we get. Those can be considered technical corrections, usually of a non-controversial nature.

• (1620)

This bill has a Royal Recommendation, which means there is a public-money aspect to it. That is not a technical consideration, and should have been mentioned. It should have been highlighted.

Finally, if for no other reason, a bill identified as an act to amend certain acts does not include amending regulations. That is what this bill does. One has to search the bill to find that out. Bills are not the private preserve of experienced parliamentarians. They belong to all Canadians. All Canadians have a right to know, through the title, which they may be hearing about for the first time, exactly what that legislation intends. Reading or knowing of this title gives absolutely no indication of what is involved. Parliament owes Canadians better information than that. For those and the other reasons I have given, this point of order is valid.

**The Hon. the Speaker:** I thank Senator Lynch-Staunton and all honourable senators for their comments and advice on this point of order raised by Senator Lynch-Staunton. I shall take it under consideration and bring back a ruling to the chamber as soon as possible.

## PUBLIC SAFETY BILL, 2002

### SECOND READING—DEBATE ADJOURNED

**Hon. Sharon Carstairs (Leader of the Government)** moved the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

She said: Honourable senators, I am very pleased to speak on Bill C-17. As honourable senators well know, this bill is in

response to the terrible events of September 11, 2001, as well as the increased potential for the use of terrorism throughout the world.

Honourable senators, in addressing the potential for terrorism, we must ensure that we go far enough to protect Canada and Canadians, but we must not go so far that we unduly intrude on human rights. We must strike a careful balance between safety and security, on the one hand, and freedom and privacy, on the other.

That was certainly the focus of much of the debate over earlier versions of this bill, as well as this version, in the other place and throughout Canada. Honourable senators, I have followed that debate and I am pleased to advise that the bill before us, Bill C-17, in my view achieves this careful and proper balance.

The goal of this bill is to increase the Government of Canada's capacity to protect citizens, to prevent terrorist attacks and to respond swiftly should a significant threat arise. It enhances our ability to provide a secure environment for air travel. It facilitates data-sharing between air carriers and the federal departments and agencies responsible for transportation and national security. It allows government to issue certain interim orders in emergency situations, while ensuring proper control over government actions. It has provisions that will deter hoaxes that will endanger the public or heighten anxiety. It establishes controls over export and transfer of technology, over explosives and hazardous substances and other activities related to other dangerous substances, such as pathogens. It helps identify and prevent harmful, unauthorized use of or interference with computer systems operated by the Department of National Defence and the Canadian Forces. It deters the proliferation of biological weapons.

Honourable senators, this is a wide-ranging bill that amends 23 acts of Parliament and establishes a new act of Parliament. Today, I want to highlight a few of the 24 parts of this bill.

Part 1 refers to amendments to the Aeronautics Act. It clarifies the aviation security regulation-making authority and prohibitions related to screenings. The bill provides Transport Canada the authority to request information from air carriers or operators of airline reservation systems on specific persons or for all persons on an aircraft subject to an immediate threat. These requests could only be made for the purpose of transportation security.

The bill provides a wider authority for the RCMP and CSIS, such that information could be requested from air carriers or operators of airline reservation systems on all persons on or intended to be on any identified flight. These requests could only be made for the purpose of transportation security or national security. This is a very important amendment to promote the safety of Canadians. It will give our law-enforcement and security agencies an invaluable tool to improve transportation security. It will also increase the government's capacity to prevent terrorist attacks and to respond quickly should a threat arise.

[ Senator Cools ]



Let me briefly explain how the RCMP and CSIS data-sharing regime would work. Air carriers currently collect personal information about passengers. With this bill, air carriers would be required to share passenger information, when requested, with a small core group of specially designated RCMP and CSIS officers for the purposes of transportation and national security. Designated officers could disclose passenger information to a third party only in a limited circumstance, such as to a peace officer if there were an immediate threat of life, health or safety. Let me assure honourable senators that designated officers would only be able to access passenger information for transportation or national security purposes.

There had been criticism of the original intention of the RCMP to match all passenger data against all data files maintained by the RCMP. To ensure the privacy of law-abiding Canadians, the Privacy Commissioner recommended that the RCMP only match passenger names against names for which a match would identify a person meeting the criteria of Bill C-17.

I am pleased to advise that both the RCMP and CSIS will be implementing this request. That is, they will only match passenger names against a much smaller subset of names consisting of those persons who pose a threat to transportation or national security. For example, the RCMP will only match possible names against persons who have an outstanding national warrant as listed in the regulations.

I would emphasize that the proposed data-sharing regime would not be used to create mega-files to track the travel patterns of law-abiding Canadians. This proposal includes important safeguards to respect the privacy of Canadians. For example, all passenger information would have to be destroyed within seven days, unless it was reasonably required for the restricted purposes of transportation security or the investigation of terrorist threats. Also, the RCMP and CSIS would each be required to conduct an annual review of information retained by designated officers. If retention could no longer be justified, the information would have to be destroyed. These safeguards were included in the data-sharing regime to ensure that the privacy of Canadians is protected.

This bill would also amend the Aeronautics Act to clarify the provisions that cover requests for information from other countries. This was raised during the Senate's review of Bill C-44. Although the clarification took a while in coming, it is now here. As a result of amendments in this bill, another country will be provided with information on passengers onboard an aircraft departing from Canada or on a Canadian airline's aircraft only if the flight is scheduled to land in that country.

Another amendment to the Aeronautics Act makes air rage an offence subject to a maximum fine of \$100,000 or five years in prison.

Part 7 of the bill deals with the Explosives Act amendments. The proposed amendments to that act are aimed at protecting Canada's explosives supply from criminal and terrorist interests. Proposed are new measures to control the acquisition and

possession of explosives by potential criminal or terrorist interests; to track the consumer sale of components of explosives, such as ammonium nitrate; and to introduce export and in-transit permit requirements to complement the current import-permit regime.

During debate in the other place, the government listened closely to the concerns expressed by stakeholders and committee members about the provisions related to inexplusive ammunition components, resulting in the removal of all references to those provisions from the bill.

• (1630)

These proposed new measures will result in Canada's eventual ratification of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, the Organization of American States convention that was signed in November of 1997. The extensive consultations that have been held with public stakeholders, federal and provincial government departments and the United States will ensure that these new security measures will not adversely impact on lawful commerce and shooting activities.

Part 8 of the bill deals with Export and Import Permits Act amendments. The Export and Import Permits Act, otherwise known as EIPA, authorizes the government to establish lists to control the import and export of specifically listed goods or articles for a variety of purposes. The Export Control List controls, in part, the export of arms, ammunition, implements or munitions of war or articles of a strategic nature or value, the use of which might be detrimental to the safety or security of Canada or its allies.

The proposed amendments of the EIPA introduce specific controls over technology, including technical data, technical assistance and information necessary for the development, production or use of military and other strategically sensitive goods listed in the Export Control List. They will also provide explicit authority to control transfers, including electronic transfers of technology listed in the ECL.

These changes respond to the need for enhanced controls over the export and electronic transfer of military and strategically sensitive technology, but these new controls will not apply to technology in the public domain, to basic scientific research or to the minimum information necessary for patent applications. The proposed amendments will also provide authority for the Minister of Foreign Affairs to consider safety and security concerns when assessing applications for permits to export or transport goods or technology. These considerations would be additional to the purposes for which the goods were originally placed under export controls.

Thus, under the authority of the proposed amendments, when accessing export permit applications the minister could consider whether the goods or technology proposed for export may be used for a purpose prejudicial to the safety or interests of the state or to the peace, security or stability of any region of the world or within any country.

The National Defence Act amendments make particular reference to reserve military judges. The bill provides for the establishment of a panel of reserve military judges. This panel would increase flexibility within the military judiciary and allow the system to respond more efficiently when demands or conflicts otherwise limit the availability of military judges. It would be comprised of reserve force officers who have previously performed judicial duties in the military justice system. The chief military judge will be able to select officers from the panel to augment the military judiciary as required. This panel would be a permanent part of the military justice system.

Bill C-17 would ensure that following a compulsory call-out of the reserves — which has not occurred in the 50 years since Korea — employers would be required to reinstate reserve members in their existing or equivalent jobs. I would note that this amendment does not reverse the government's position on voluntary employer support for reserves. Indeed, Canadian employers know well the value they get by hiring a trained member of the reserves, and they have consistently been supportive of their employees' commitment to the Canadian Forces. This amendment would simply provide a safety net in the unlikely case that a compulsory call-out was required.

Honourable senators, on another item, let me begin by noting that computer systems and networks are an integral part of the Department of National Defence's critical infrastructure, and ones that must be protected. Over the past decade, the Canadian Forces have been making increasing use of technology, particularly in military operations. While this has improved their operational effectiveness, it has also widened the scope for interference and attack. That is why, under Bill C-17, the Minister of National Defence would have the authority to authorize DND and the Canadian Forces to intercept communications passing into, from or through defence computer systems. This authority would only be given to persons who perform duties in the day-to-day protection of these systems and networks. These individuals could be authorized to intercept private communications in order to isolate or prevent harmful, unauthorized use of, interference with or damage to defence systems.

We are interested in ensuring that we can protect critical defence IT systems and networks both at home and abroad. To ensure that the proper checks and balances are in place, the Commissioner of the Communications Security Establishment is given the mandate to review the activities carried out under this authority.

The proposed amendments to the National Energy Board Act will clearly define the powers of the National Energy Board with respect to energy infrastructure security. The board currently has the mandate to regulate safety of interprovincial and international pipelines and international power lines. The amendments to the National Energy Board Act will provide the board a clear statutory basis for regulating the security of energy infrastructure under its jurisdiction. The proposed amendments would expand the National Energy Board's mandate to regulate security of installations and provide the board with a clear statutory mandate to do a number of things, such as order a pipeline company or

certificate holder for an international power line to take measures to ensure the security of the pipeline or power line; to make regulations respecting security measures; to keep security-related information confidential in its orders or proceedings; to provide advice to the Minister of Natural Resources on issues related to security of pipelines and international power lines; and to waive the requirement to publish a notice in the *Canada Gazette* for a permit to construct and operate an international power line if the board considers there is a critical shortage of electricity caused by a terrorist activity.

Finally, honourable senators, let me speak to one of the general provisions of Bill C-17 that affects the ability of the government to respond in a crisis. There has been considerable discussion about the provision for interim orders. I believe we will all agree that the very essence of democracy requires accountability when governments take emergency measures that may have an effect on existing legislation and regulations. At the same time, I doubt whether anyone disagrees that governments must have flexibility to respond quickly with interim measures to unforeseen situations.

We certainly learned on September 11, 2001, that in a crisis there may be the need to make an immediate decision in an area that had not previously received extensive analysis. On September 11, every minute and a half we had another aircraft to add to the list of those with which we were contending. We had to turn off the flow, and we had to turn it off immediately. It was not a matter to debate for an hour or so. Fortunately, the government had the authority needed to close Canadian airspace and thus turn back those aircraft that could return to Europe. The lesson was clear: An event transpired that needed an immediate decision, and we have to be ready for such possibilities in the future.

Honourable senators, an interim order can only be put into effect if, time permitting, it could be put in place as a regulation; that is, the parent act must have the authority, already granted by Parliament, to make a regulation out of the interim order.

Honourable senators, let me put it another way: The only matters that can be covered by interim orders are matters for which Parliament has already given approval in the regulation-making scope of the acts in question. Thus, an interim order would essentially bring into immediate force a provision that I could characterize as having already received approval in principle. To ensure that there is sufficient accountability associated with this process, the bill requires that the interim order be approved by the Governor in Council within 14 days, be tabled in Parliament within 15 days, be published in the *Canada Gazette* within 23 days and be converted to a regulation within one year.

An exception to the one-year requirement is found in the interim provision in the Canadian Environmental Protection Act. That act currently provides for interim orders that may have a duration of two years. Failure of any one of these nullifies the effect of the interim order at the time of that failure.

In summary, honourable senators, we are talking of bringing forth regulations that have already been approved in principle in times of extraordinary need and with very strict conditions applied. This provision is a good example of what I referred to at the beginning of my comments as a need for balance, providing ministers with the tools to act quickly in emergencies, while putting in place the proper oversight mechanisms to ensure democratic accountability.

• (1640)

**Hon. Tommy Banks:** Honourable senators, would the Leader of the Government accept a question, even a naive one?

**Senator Carstairs:** Yes.

**Senator Banks:** Honourable senators, I have not discussed this matter with either the chair or the deputy chair of the Standing Senate Committee on National Security and Defence. However, I have just asked the deputy leader about the committee to which this bill will be referred. He has informed me that the Standing Senate Committee on National Security and Defence was designed, in effect, not to receive legislation.

During the process of the leader reading the information about the bill, I was struck by the fact that, with the exception of the references to the National Energy Board, and even in some aspects of that reference, every other matter, every other agency, every other consideration, every other aspect of this bill deals with things that the National Security and Defence Committee has been studying for the past many months and about which their members, I will say immodestly, have a considerable amount of first-hand knowledge.

There is probably not an answer to my question at the moment. However, might there be a way for some of the corporate information, if you like, that exists already in that committee, to be made available to the committee to which this bill is intended to be referred, which I understand is to be the Transport and Communications Committee?

**Senator Carstairs:** Honourable senators, I thank the honourable senator for the question. What he has suggested is an excellent idea. Obviously, the committee can apprise itself of any information that it might find valuable in its study.

However, I should point out that the bulk of the bill deals with the Aeronautics Act, which comes under the jurisdiction of the Transport and Communications Committee. That is the reason the decision was made.

However, the honourable senator has raised an interesting point. Obviously, the studies that have been done by his particular committee, chaired so ably by Senator Kenny, deal with such issues as the National Defence Act amendments. There would also be some interest in the committee that Senator Banks chairs, with respect to the National Energy Board amendments.

It was not an easy decision to make. Frankly, it was based on the fact that the vast majority of the bill deals with the Aeronautics Act.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I did not think it was the Leader of the Government who decides which committee will entertain a bill. I thought it was the Senate; but, then, here we go again.

On that note, I move the adjournment of the debate.

**Senator Carstairs:** Obviously, the senator is absolutely correct. It is the Senate that will determine to which committee the bill will be referred. However, the recommendation to the Senate will be that it be referred to the Transport Committee.

**Hon. Anne C. Cools:** Honourable senators, it seems to me that this bill is an enormous one. It is a bill of very weighty subject matter.

What plans are there for the chamber? The chamber should be in a state of winding down its business, in anticipation of the election of a new leader. However, more and larger bills are being introduced.

Could the government leader tell us how it will be possible to process such a weighty bill here in the Senate in another two or three weeks?

**Senator Carstairs:** The honourable senator has certainly identified a huge challenge. This is, indeed, a very large bill.

In that regard, I remind honourable senators of a process we now have but which we did not have just a few years ago. It is one that allows the House of Commons to resurrect a bill. If we were unable to finish with this bill prior to the prorogation that some people seem to think will take place, then it could be resurrected in the other place and sent back to us for us to complete our work on it.

There are a number of options here that could be investigated. Obviously, people would like us to deal with this bill as quickly as we can. I concur entirely that it is a heavy bill and must receive due consideration by all members of this chamber.

**Senator Cools:** Honourable senators, I am relieved to hear what the leader has said. I must admit that seeing such major initiatives of such momentous subject matter and of such legal complexity being rushed in haste and with insufficient study sends chills and alarms all through me.

I take no personal interest in the bill. It is not subject matter in which I get involved. However, I must admit that I am beginning to take a serious interest in the sheer weight and number of bills that are coming forward.

As far as I am concerned, this is a time when we should be sort of letting go. "Letting go" is an expression used in psychology. This is a time for the outgoing administration to be letting go, rather than to be bringing on fresher, newer and more difficult initiatives. I do not think it is very responsible of us to be moving these bills through, knowing that we cannot give them the attention and the study they deserve.

I find what the honourable leader has said to be reassuring. Although, in light of what the honourable leader has said about prorogation, I can also take some issue with the fact of intending to defeat the effects of prorogation when prorogation is supposed to perform a certain task in the parliamentary system. However, that is an argument for another day.

I am greatly encouraged by the fact that the leader has indicated to us that she believes this bill should get the kind and quality of study that it deserves.

We all know that September 11 shook us to our roots and that the government has had to make a lot of initiatives and has needed a significant amount of legislative support to be able to offer Canadians the kind of quality and protection they deserve. This was unprecedented, and I would say previously unconsidered and unthought of protection. However, at the same time, I am of the opinion that we should proceed carefully and cautiously.

I wanted to record that. I am not taking any interest in the bill and I have not to this point in time. I was listening carefully. Based on the words of Senator Carstairs, this is a huge and enormous initiative.

**Senator Carstairs:** Honourable senators, I want to add one thing because I think this bill does require very careful study. We have had a number of questions in here and a number of concerns raised by senators on both sides of the chamber about our relationship with the United States and its attempt to make it more difficult in some cases for Canadians to cross the border.

I would be remiss if I did not indicate that the Americans are anxious for some of the provisions of this particular piece of legislation to pass. In my view, that should not force our undue haste in passing the legislation. However, we would be naive if we did not recognize that the American government has just this past week indicated that it wants to have a more generous policy toward Canadians and Canadians crossing the border. I hope we want to encourage that attitude. However, there are provisions, particularly with respect to the Aeronautics Act, that are very important to the United States.

**Senator Cools:** I thank the honourable senator for that. I am very aware that our government is trying to restore stability and uncertainty in so many of these areas. After September 11, the disruptions were enormous.

I know that there is a good intention and I understand the needs that are out there. I understand the American concerns as well. Where I was coming from is that this bill be given the proper time and consideration, because these issues are difficult and sensitive.

• (1650)

To my mind, it is simply not good enough for us to blink, pass a bill and look around and say, "What was that we were voting on

just now?" I think we should take our jobs seriously. I am encouraged by what the honourable senator has had to say and about the seriousness with which we will take this bill.

**Senator Lynch-Staunton:** I should like to commend the Leader of the Government for assuring this chamber that this bill, if need be and if circumstances warrant, would be brought back in another session. That development would be welcomed. Her response indicates that the government realizes the complexity of this bill.

Why is that same approach not given to other bills that are also complex and controversial, such as Bill C-34 that is before us now? Perhaps she can give us the assurance that all bills will be treated the same way, that the deadline that we all feel but has yet to be confirmed will not be an impediment to a proper study of all legislation that comes before us, and that an exception will not be made for one bill in particular.

**Senator Carstairs:** I think it can be argued that some bills are weightier than others. There is a great deal of support for Bill C-34. Many senators wish to see that bill moved forward and believe it can receive adequate study in a much shorter period of time.

**Senator Lynch-Staunton:** If the honourable senator will allow the Senate to decide that, then I am on her side. However, if the government imposes its will on setting deadlines, I do not think she will find much support here.

**Hon. Pierre Claude Nolin:** I did not hear the answer that the government leader gave to Senator Banks. It has not been decided which committee will look into that — the decision is open.

**Senator Carstairs:** The Senate makes that decision.

**Senator Nolin:** I know that the bill talks about safety, air safety and aeronautics, but the common thread, the underlying theme of the bill is national security. If there is one place where that bill should be studied carefully, it is the Standing Senate Committee of National Security and Defence.

Ministers will be empowered to give their authority to another body for the sake of national security. Great power will be given to unknown individuals, but respected people, for the sake of national security. We will exchange information with other jurisdictions, other countries, for national security. If there is one place we should study that bill, it is in the National Security and Defence Committee, which knows about national security. There is only one committee that can conduct such a study. This is not a transportation bill; it is a national security bill.

I hope the honourable senator is open-minded and that the proposed legislation can be sent to the Standing Senate Committee on National Security and Defence.

On motion of Senator Lynch-Staunton, debate adjourned.

[ Senator Cools ]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-18, to amend the Criminal Code (lottery schemes).—(*Honourable Senator Milne*).

**Hon. Lorna Milne:** Honourable senators, its addictive properties have been compared to crack cocaine and deaths linked to it have more than quadrupled in the province of Quebec over the last five years. I believe that the time has come for the government to step in and do something to stem the tide of this killer.

No, I am not talking about the latest drug to hit the streets. No, it is not a new weapon that is being brandished by gangs across the country. I am talking about something that is currently perfectly legal in Canada — and that is the video lottery terminals, or VLTs.

Provincial lottery and gaming authorities have been allowing VLTs to be placed in restaurants and bars for years now. There is no doubt that they are very popular and they generate a significant amount of revenue for the provinces. However, that revenue has come at a very high price.

In a report released on October 3, 2003, the Quebec coroner noted that from 1999 to 2003 there were 126 suicides in Quebec related to gambling, compared to just 27 in the previous four years. The coroner noted that in the vast majority of those 126 suicides, the person was addicted to VLTs. This issue is becoming so serious that earlier this spring, at a recent annual meeting of provincial coroners that was held in Iqaluit, the coroners devoted a portion of their agenda to discuss how suicides related to gambling could be prevented.

In my own province, the statistics are not readily available, but I can tell senators that I have heard many stories about deaths in the parking lots of Ontario's casinos. Many people have been caught in the disease of gambling simply because it is much more available to them than ever before.

In a time where voters demanded tax cuts, provincial governments found that gambling was their only growing source of revenue. By putting VLTs in restaurants and bars across the province, they were able to make up some of the revenue that they lost when tax cuts were made. I believe that this activity by some provinces, including my home province of Ontario, is immoral.

Honourable senators, this bill attempts to start to stem the tide of addictive VLT gambling by limiting where they can be placed to casinos and racetracks. I support this move. The passage of this bill will help to address the problems associated with addictive gambling in a number of ways.

First, by limiting the number of places where a person can get to a VLT, it will become somewhat more difficult for those with gambling problems to get their fix. Further, by limiting the positioning of VLTs to casinos and racetracks, it will keep them away from Canada's youth. Many restaurants, for example, have VLTs on the premises where teens can play unsupervised. Canada's casinos and racetracks do not allow people under the age of majority to be on site. Therefore, this move will help to keep our young people, many of whom are already addicted to video games, from suffering the harms of gambling.

Another concern that has been raised in connection with the proliferation of VLTs is their use by organized crime to raise funds. Before Ontario legalized the placement of VLTs in restaurants and bars, many people indicated that it would be virtually impossible to distinguish between a machine that was operating legally and a grey market machine whose processes could be diverted to criminal elements. Limiting the use of these machines to provincially controlled casinos and racetracks will eliminate this concern.

Finally, unlike in restaurants, casino and raceway staff, I have been assured, are trained to look out for those suffering or showing the symptoms of problem gambling, and to offer help and support to those who are ill to the point of being unable to gamble responsibly. For example, all Ontario casinos have programs whereby a gambler can voluntarily enter into an agreement to keep out of the establishment. If that person then returns, he will be automatically arrested for trespassing by casino security.

At the same time that this agreement is entered into, the casino offers help in dealing with gambling addictions. The person is referred to one of 45 designated agencies across the province of Ontario, where he or she can access treatment for gambling addiction problems. These kinds of services simply are not available at restaurants, where the lure of a VLT in the corner at the bar may be too much for those who suffer from what is really a debilitating disease.

• (1700)

Honourable senators, it is clear to me that the damage done by VLTs far outweighs the benefits of the revenue generated by them. Originally, lotteries were established to support charities and health care, while providing a legal outlet for the gambling that always seems to occur in society. We have, however, moved far beyond the limited scope of lotteries. Gambling is now a multi-billion dollar industry in the Province of Ontario alone. Governments are addicted to the revenues. Although an argument can be made that some gambling and lotteries are fun and beneficial to society, no one can seriously argue that the crack cocaine of gambling is something desirable for Canadians. I encourage all honourable senators to vote in favour of Bill S-18.

**Hon. Anne C. Cools:** Will the Honourable Senator Milne take a question?

**Senator Milne:** I will.

**Senator Cools:** I have been touched by the whole phenomenon of problem gambling and all honourable senators join in this concern. As I listened to Senator Milne's explanation, I wondered why an amendment to the Criminal Code is necessary to place such limits. It seems to me the senator described not a criminal matter, per se, but rather a need for a regulatory scheme. I believe that the honourable senator was promoting the use of a regulatory scheme and perhaps that is the intent of the bill. Why must the Criminal Code be amended in this case?

I belong to that group of lawmakers who believes and upholds the notion that the Criminal Code should be resorted to rarely. What considerations were given to achieving the same end via a regulatory scheme? In setting up the firearms registry many people proposed to the government that it look to regulatory processes rather than Criminal Code processes. The approach taken has led to many problems. There is quite a difference between the two approaches. Could the honourable senator shed some light on this perplexing matter?

**Senator Milne:** I believe that suicide is a Criminal Code matter, which I hope this bill will address. These questions can be raised in committee and I am hopeful that this bill will be referred immediately to committee where it will study other ways of dealing with this issue. This is not a regulatory matter at this time.

**Senator Cools:** I should like to make my point clear for the record.

I would certainly be pleased to hear Senator Lapointe speak to this matter.

[Translation]

**Hon. Jean Lapointe:** Honourable senators, the main reason we moved an amendment to the bill is that video lotteries come under provincial jurisdiction. The provinces control revenues from casinos. The only way to get around the problem was through an amendment to the Criminal Code. I thank Senator Milne for her heartwarming remarks.

[English]

**Senator Cools:** I appreciate the response of the honourable senator that it is a provincial matter that requires to be dealt with by way of provincial statutes and regulations. Amendments to the Criminal Code are in the federal domain.

I understand the purpose of the bill and changes should be explored. Perhaps when the bill is referred to committee we could invite provincial representatives to appear before our committee to shed some light on some of these problems.

Senator Lapointe referred to people being driven to desperation because of an addiction to gambling. It must be extremely unsettling for individuals to gamble away their homes and then have to confront the realization of what they have done later.

For honourable senators' information, suicide is no longer a criminal offence. Perhaps that is because it was found to be difficult to prosecute dead people. However, it is still a criminal offence to counsel, aid and abet suicide. Although suicide is no longer a criminal offence, it is homicide of the self. I want to put that on the record, because it concerns us all.

**Hon. Marcel Prud'homme:** Honourable senators, as a member of the other place, I introduced a private member's bill dealing with the issue of suicide. The matter was taken up by Mr. Otto Lang who was responsible for an amendment to the Criminal Code. As a result, suicide was no longer a crime. That was a long time ago.

**Senator Milne:** I thank you for that.

**Hon. Pierre Claude Nolin:** Honourable senators, I will phrase my comment in the form of a question. The Legal Committee has reflected at length on the use of the Criminal Code. The members of that committee came to the conclusion, after researching many documents and well-thought-out papers, that the Criminal Code and the penal law in prosecution should be used when human action causes significant damage to others. The bill proposed by Senator Lapointe meets that criterion. It is the perfect example of the intended use of the Criminal Code.

I listened carefully to the speech by Senator Lapointe as well as the comments made by other senators. Senator Cools' question as to why the Criminal Code should be amended in this instance has been answered. This human action can cause significant damage to others. I would suggest that we forget about the issue of suicide because once a person is dead, nothing further can be done. However, Senator Lapointe, in his support of the bill, referred to the damage that can be caused to families as a result of habitual gambling, and that should be covered by the Criminal Code. Will the honourable senator answer yes or no?

**Senator Milne:** I will not answer yes or no, but I will agree that this strikes deep into the heart of society. As a matter of fact, in addressing criminal matters and the fact that abetting suicide is a criminal matter, perhaps casinos could be charged with abetting suicide.

Motion agreed to and bill read second time.

[Translation]

REFERRED TO COMMITTEE

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

On motion of Senator Lapointe, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

• (1710)

[English]

**CONSTITUTION ACT, 1867  
PARLIAMENT OF CANADA ACT**

**BILL TO AMEND—SECOND READING—  
DEBATE SUSPENDED**

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Stratton, for the second reading of Bill S-16, to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Honourable Senator Beaudoin*).

**Hon. Gérard-A. Beaudoin:** Honourable senators, Senator Oliver has proposed legislation that has as its objective the election of the Speaker of the Senate. First, I wish to analyze the constitutional question. Thereafter, I shall say a few words about democracy.

Since 1982, we have had a procedure to amend the Constitution of Canada, in sections 38 to 49 of the Constitution Act, 1982. There are five facets. First, there is the residual and general one — that is, Ottawa and the seven provinces having 50 per cent of the population.

The second formula is the unanimity rule, that is, Ottawa and all provinces. This applies in five cases. This is the monarchy, the representation in the House of Commons, the use of English and French languages, the composition of the Supreme Court, and an amendment to the formula of amendment itself.

The third facet is an amendment to the Constitution in relation to any provision that applies to one or more but not all provinces — that is, Ottawa and one or more interested provinces.

The fourth one is the amendment of the federal internal constitution — that is, the executive government of Canada or the Senate and the House of Commons. That is section 44.

Finally, the fifth facet is the amendment of the internal constitution of the provinces, section 45.

Section 34 of the Constitution Act, 1867 reads as follows:

The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

In my opinion, Parliament may amend section 34 of the Constitution Act, 1867 on the basis of section 44 of the Constitution Act, 1982, which reads as follows:

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Therefore, it is possible to amend the Constitution by a simple statute of a constitutional nature, for that case, of course.

[Translation]

The Governor General is losing one power. We may have to seek the consent of the Crown. I am referring here to citation 727 in Beauchesne, 6th Edition, which states:

[English]

The consent of the Crown is always necessary in matters involving the prerogatives of the Crown.

[Translation]

In my opinion, section 44 of the Constitution Act, 1982 authorizes Parliament to make an amendment. In addition, there is a constitutional convention whereby the Speaker of the Senate is selected by the Prime Minister.

Debate suspended.

**BUSINESS OF THE SENATE**

**The Hon. the Speaker *pro tempore*:** Honourable senators, it being 5:15 p.m., pursuant to order of the Senate made on October 20, 2003, any proceedings before the Senate must be interrupted to dispose of the deferred vote on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable 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]

Pursuant to rule 66(3), the bell to call in the senators will be sounded for 15 minutes.

Call in the senators.

• (1730)

**SPECIFIC CLAIMS RESOLUTION BILL**

**THIRD READING**

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Joyal, P.C., 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,

And on the motion in amendment of the Honourable Senator Gill, seconded by the Honourable 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.

Motion in amendment negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Adams	Johnson
Andreychuk	Kinsella
Atkins	Lapointe
Beaudoin	LeBreton
Buchanan	Lynch-Staunton
Carney	Nolin
Cochrane	Oliver
Cools	Prud'homme
Corbin	Rivest
Di Nino	Robertson
Eyton	Spivak
Forrestall	Stratton
Gill	Tkachuk
Gustafson	Watt—28

NAYS  
THE HONOURABLE SENATORS

Austin	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Mahovlich
Chalifoux	Massicotte
Christensen	Merchant
Cordy	Milne
Day	Pearson
De Bané	Phalen
Downe	Poulin
Fairbairn	Poy
Finnerty	Ringuette
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Graham	Sibbeston
Hervieux-Payette	Smith
Hubley	Stollery
Kenny	Trenholme Counsell
Kirby	Wiebe—42

ABSTENTIONS  
THE HONOURABLE SENATORS

Bacon	Joyal
Ferretti Barth	Moore—5
Grafstein	

**The Hon. the Speaker pro tempore:** Honourable senators, the question is now on the motion of 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.

Those in favour of the motion will please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker pro tempore:** Those opposed to the motion will please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker pro tempore:** In my opinion, the “yeas” have it.

*And two honourable senators having risen:*

**The Hon. the Speaker pro tempore:** Pursuant to rule 67(5), we will now proceed with a standing vote.

Motion agreed to and bill, as amended, read third time and passed, on the following division:

YEAS  
THE HONOURABLE SENATORS

Austin	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Mahovlich
Chalifoux	Massicotte
Christensen	Merchant
Cordy	Milne
Day	Pearson
De Bané	Phalen
Downe	Poulin
Fairbairn	Poy
Finnerty	Ringuette
Fitzpatrick	Robichaud
Fraser	Roche
Furey	Rompkey
Graham	Sibbeston
Hervieux-Payette	Smith
Hubley	Stollery
Kenny	Trenholme Counsell
Kirby	Wiebe—42

NAYS  
THE HONOURABLE SENATORS

Adams	Kinsella
Andreychuk	Lapointe
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Buchanan	Nolin
Cochrane	Oliver
Cools	Prud'homme
Corbin	Rivest
Di Nino	Robertson
Eyton	Spivak
Forrestall	Stratton
Gill	Tkachuk
Gustafson	Watt—27
Johnson	



ABSTENTIONS  
THE HONOURABLE SENATORS

Bacon  
Carney  
Ferretti Barth

Grafstein  
Joyal  
Moore—6

• (1740)

[Translation]

CONSTITUTION ACT, 1867  
PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Stratton, for the second reading of Bill S-16, to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Honourable Senator Beaudoin*).

**Hon. Gérald-A. Beaudoin:** Honourable senators, I will pick up where I left off.

In my opinion, section 44 of the Constitution Act, 1982 gives Parliament the power to amend. Moreover, there is a constitutional convention that the Prime Minister chooses the Speaker of the Senate. A constitutional convention can be changed; it can be dropped by the Prime Minister.

[English]

The advisory opinion given in 1979 by the Supreme Court of Canada on the status and powers of the Senate disposes of that first point, in my view, that is, that section 44 applies.

Some will say that it is the general or residual facet of the formula of amendment — 7-50 — that applies, that is, section 38 and 42 of the Constitution Act, 1982. This is not my view. Furthermore, I do not think that section 41, the unanimity rule, applies in this case because we do not replace the monarchy by a republican system. In such a case, of course, section 41, the unanimity rule, would apply.

Again, the reference of 1979 on the powers of the Senate disposes of that question. Section 44 of the formula of amendment replaces section 91.1 of the BNA (No. 2) Act, 1949, and section 45 replaces section 91.1A of the BNA (No. 2) Act, 1867. Again, this disposes of the legal question.

The second question is this: “Should we do it?”

The system that we inherited in 1867 from the United Kingdom is a good one, no doubt. However, we must remember that, in 1867, we were a colony in the British Empire, with an interior autonomy. Since 1931, we have been an independent country and we are in the concert of nations.

As a matter of fact, as the Supreme Court said in the patriation case of September 1981, Canada became independent in the 1920s, between 1919 and 1931, at the time of the Balfour Declaration. Finally, in 1931, the Parliament of Westminster confirmed in law what already existed in the facts.

In 1867, we modelled our Senate on the House of Lords instead of on the American Constitution. The House of Lords is an aristocratic house. The House of Lords lost some of its powers in 1911 and 1949. That was not the case for the Senate, in spite of the fact that we have been talking about amending the Senate for more than a century. In 1965, we amended the tenure of office of senators. At first, senators were appointed for life; since 1965, senators retire at age 75.

Since we are talking about some reforms of the House of Lords, I must say, *en passant*, that I am pleased to see that Prime Minister Blair has abolished the position of Lord Chancellor. The Lord Chancellor was simultaneously a judge, a legislator and a member of cabinet. That is something. The three powers, in my humble opinion, should be separated. This is much better for democracy.

My view, and the views of many others, is that the Speaker should be elected. In a great democracy, as Canada clearly is, the Speaker of the Senate should be elected. I do not speak of the question of an elected Senate. That is not the object of Senator Oliver's bill. That subject is not before us, although I have an opinion on that, too.

The Senate, as much as the House of Commons, is a legislative house with great powers. In a democracy, the Speaker of the Senate should be elected. The Senate differs from the Commons on three points only: money bills should originate in the House of Commons; our veto on constitutional amendment as dealt with in section 47 is a suspensive veto of six months; and there is no vote of confidence in the Senate. For the rest, both Houses have the same power.

Part of our Constitution is written and part is unwritten. It was necessary to do that in 1867, since we are a federation. Every federation has a division of powers enshrined in its constitution.

The Supreme Court, in the patriation case of 1981, stated that the Constitution consists of three elements: the Constitution Acts since 1867; the decisions of the courts; and, finally, the conventions of the Constitution. Those conventions, which are important, involve the unwritten part of the Constitution — the choice of the Prime Minister, the vote of confidence in the Commons, the dissolution of the House, and so forth. Those conventions are numerous and of the highest importance, as we can see.

• (1750)

The courts may recognize these conventions, but they do not impose them. If they are not complied with, the remedy remains in the political arena. The courts do not implement the Constitution.

A convention of the Constitution, according to the illustrious Professor Jennings, required three elements: the precedents and usages; the actors who consider they are bound by a convention; and, finally, a *raison d'être* for the convention.

[Translation]

The conventions are based on custom and precedent. Their purpose is “to ensure that the legal framework of the Constitution will be operated in accordance with the prevailing principles or values of the period,” said the Supreme Court in its 1981 Patriation Reference.

[English]

The House of Commons has an elected Speaker. Why not the Senate? After all, are we not a legislative house?

According to the experts, the great democracies of the world are not numerous, but our country is among those great democracies. I do not see why, with our legislative status, we should not, at the appropriate time, elect our president.

Compared to the Senate of 1867, the Senate of today is much stronger, especially with the Senate committee system that has been developed. It is true that, in amending section 34 of the Constitution Act of 1867, we transferred the power of the executive to the legislative branch of the state. That is a good thing, in my opinion, because the legislative branch of the state is not as strong as are the executive branch and the judicial branch, as is the case in British-inspired systems.

We now have an opportunity to give more power to the legislative branch of our federation. In my opinion, we should take it.

**Hon. Anne C. Cools:** Would Senator Beaudoin take a question?

**Senator Beaudoin:** Yes.

**Senator Cools:** I know that the bill —

**The Hon. the Speaker *pro tempore*:** Senator Cools, I regret to inform you that the time for speaking on that matter has expired.

**Senator Beaudoin:** I may answer the question.

**The Hon. the Speaker *pro tempore*:** Is leave granted to answer one question?

**Hon. Senators:** Agreed.

**Senator Cools:** This is very important. A characteristic of the Houses of Parliament is that they do not have the powers to appoint even their own officers, such as the Clerk of the Senate and the Black Rod. These are all appointments of Her Majesty. This is just a characteristic or feature of Parliament.

Section 34 of the BNA Act respects that. Section 34 deals with how the current Speakers of the Senate are appointed. It reads as follows:

The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

The BNA Act's Section 34 is not much concerned about how that person is chosen. The BNA Act is concerned with how that person is appointed. The BNA Act has presupposed that the Prime Minister, in making recommendations to the Governor General for the appointment, will choose candidates who enjoy the respect, the esteem and the affection of senators.

What I am trying to get at is that, as long as these positions are great offices of state, they have to be appointed by Her Majesty or Her Majesty's representative. That is the conundrum that the honourable senator does not seem to solve and neither does Senator Oliver. We all agree that the person who sits in the Chair should have our affection and esteem. Whether that person is chosen by a direct election or not is a different matter. For hundreds of years, the election of the Speaker of the House of Commons was not done by direct election and secret ballot by members. It used to be done by way of government motion.

How does the honourable senator solve that conundrum? There is nothing in sections 41, 42 or 44 that would allow Parliament to amend the powers of Her Majesty in making Her Majesty's appointments. These are Her Majesty's appointments under the instruments of the Great Seal. It just cannot be done that way. I am very curious about this.

**Senator Beaudoin:** The solution to problem seems, to me, to be very logical in constitutional law. Currently, the Speaker of the Senate is a senator who is appointed. If we pass the amendment proposed by Senator Oliver, that position will no longer be an appointment. It will be done by way of an election.

Section 44 of the Constitution Act, 1982 clearly specifies — and I think that the Supreme Court would agree — that:

Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

That power is given. The Speaker will still be the Speaker. The only difference is that he or she is appointed instead of elected.

In the House of Commons, the Speaker is also elected. In my opinion, by a simple amendment, a constitutional statute adopted by Parliament, Parliament may amend section 34, because that is exactly what is contemplated by section 44.

When we decided in 1965 that senators should retire at age 75, this was accomplished by a simple amendment to the Parliament of Canada Act. Section 44 of the Constitution Act, 1982 succeeded section 91.1A of the British North America Act, 1867. I see no difficulty with this procedure. I believe we have

[ Senator Beaudoin ]

that power. What is the alternative, honourable senators? Is it to have unanimous consent? We are not abolishing the monarchy. We are continuing with a constitutional monarchy, except that the head of the Senate would be elected from among the senators by senators.

**Senator Cools:** The election that the honourable senator is speaking of would result in the selection of the person. It would not create the office. Only Her Majesty's appointment can create that office.

• (1800)

This is what I am trying to say. This is the question that no one here is answering, because Parliament does not have the power to appoint its own officers.

[Later]

Honourable senators, I am finished. I think Senator Beaudoin has worked hard enough for today.

**Senator Beaudoin:** I have given my opinion and it is clear-cut.

On motion of Senator Cools, debate adjourned.

[Translation]

#### BUSINESS OF THE SENATE

**The Hon. the Speaker *pro tempore*:** Honourable senators, it is now 6 p.m., and pursuant to rule 13(1) I must leave the Chair until 8 p.m.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I believe that honourable senators might consent not to notice the hour in order to consider two items on the Order Paper: Bill C-250 and a motion by the Honourable Senator Kirby to allow the committee to sit. All the other items can be stood until the next sitting.

#### COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I want to also ask that the committees required to sit at 6 p.m. be granted leave to do so.

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

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** The committees are now authorized to meet.

Motion agreed to.

[English]

#### CRIMINAL CODE

#### BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Stand.

**Hon. Serge Joyal:** Question!

**The Hon. the Speaker *pro tempore*:** Are you moving the adjournment of the debate, Senator Cools?

**Senator Cools:** I stood this item. I said "stand."

**Hon. John Lynch-Staunton (Leader of the Opposition):** The item is in her name; she said "stand."

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, to clarify matters, when Item No. 2, Bill C-250, was called, the Honourable Senator Cools said "stand." The Honourable Senator Joyal asked that the question be put. In such a case, I do not know if we would normally ask the person to move adjournment and whether it is agreed to or not.

[English]

**Senator Cools:** I am a little confused. I was under the impression that we were proceeding very tentatively to stand all remaining items. Senator Carstairs approached me and explained the situation, and I said, "Very well, I will stand this item." It seems something is wrong here. We are still proceeding and it is past six o'clock. I was under the impression that we were quickly whisking along. That is what I understood.

When that agreement was made, I was operating under assumptions. Perhaps my assumptions were wrong, but I was under the impression that we did not want to stay sitting here and that we would not see the clock for only a few minutes.

[Translation]

**Senator Robichaud:** Honourable senators, when I asked to stand these items, I wanted us to address Bill C-250 and Motion 151. I was told we were prepared to talk about Bill C-250 and that we would do so today. For that reason, I asked that this item be taken into consideration now. If that does not work, I will not press the issue. We, and the members opposite, wanted to accommodate those who intended to move Bill C-250 forward.

Order stands.

[English]

**SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY**

**COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE**

**Hon. Marjory LeBreton**, pursuant to notice of October 8, 2003, moved:

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.

She said: Honourable senators, by way of explanation, I am fully cognizant of the fact that there is a vote tomorrow in the chamber. The committee will wait to sit until after the vote. The reason committee members want to sit while the Senate may be sitting is that we have arranged for a video-conference with representatives of the Centers for Disease Control and Prevention in Atlanta. The equipment is technically difficult to set up and we have the room set aside. Therefore, I would request that the motion standing in my name be approved.

**Hon. Marcel Prud'homme:** Honourable senators, it is a question of principle that at least I stand up to say that I have strong reservations. I want to be on the record to explain and then I will sit down.

A committee asked to sit this afternoon. I must say that I usually object because there will be eventually no senators in the

chamber. However, if I am not involved directly, then I have no objection if others wish to sit.

I have no objection to this motion. However, my chair will ask for permission to sit tomorrow and he has consulted with me. I appreciate the graciousness of Senator Kroft who asked me if I would allow the Banking Committee to sit tomorrow.

I now place myself in the hands of Senator Robichaud and Senator Carstairs. There are items on the Order Paper that are of great interest to me. I will not be derelict in my duty because I am not on the Social Committee. However, permission to sit will be requested tomorrow and I will say yes. If, during that time, the Senate proceeds to address bills that I might wish to speak on — I have three items, two of which stand in my name — where do I go? We are on the final report. The draft is ready in both languages. I will not delay that. Where do I go tomorrow? The Banking Committee is working on the final acceptance of a very important item to report back to the Senate.

I would like to say yes to this request, but I hope that Senator Carstairs and Senator Robichaud will keep this in mind when my committee sits.

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

Motion agreed to.

The Senate adjourned until Wednesday, October 22, 2003, at 1:30 p.m.

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