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(HANSARD)

**Thursday, October 30, 2003**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Thursday, October 30, 2003

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

Prayers.

### SENATORS' STATEMENTS

#### UNITED NATIONS

##### SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY

**Hon. Mobina S. B. Jaffer:** Honourable senators, when I was a little girl, I clearly remember my mother reading poems to me about young men travelling to the battlefields to fight in the war. I remember listening to how they would travel through the trenches and how their bodies lay dead in the muddy fields. Now, when I read poems to my children about war, there is a stark difference. War has come into our communities and into our homes, literally and figuratively. For those lucky enough, war has come to their homes only by television. Others are not so fortunate. The Rwandan genocide, the war in Sierra Leone — these are no longer wars fought on a battlefield; rather, they have come to our streets and backyards, directly affecting our men, women, boys and girls.

It is for this reason that Security Council Resolution 1325 holds such great importance. It is a landmark document that clearly recognizes the distinct impact of war and conflict on our men, women and children. In acknowledging how war affects men, women and children in different ways, Resolution 1325 calls for women's full and equal participation in the peace processes and, of course, specific protection for the rights of women and girls. Resolution 1325 is the first of its kind to deal exclusively with issues of women's peace and security, and results from many years of intense work. As Kofi Annan stated, "Just as your work can promote gender equality, so can gender equality make your work more likely to succeed."

In Canada, both government and civil society have a clear desire to see Resolution 1325 implemented to the fullest possible extent. Tomorrow marks the third anniversary of the unanimous adoption of Resolution 1325 by the United Nations Security Council. Honourable senators, I implore each of you to support and understand this landmark document. The changing face of war has brought us new challenges, and we must recognize the importance of 1325 in meeting these challenges and the role of women in contributing to the critical task of building sustainable peace for all.

Honourable senators, we must work to make Resolution 1325 a living reality. We cannot afford to keep losing our men, women and children in the name of war.

### MANNING INNOVATION AWARDS

#### CONGRATULATIONS TO RECIPIENTS

**Hon. Wilfred P. Moore:** Honourable senators, I rise today to make a statement with regard to the Manning Innovation Awards, which were presented in Halifax, Nova Scotia, on Friday, October 3, 2003. This national awards program, which began in 1982, is named after former Alberta Premier Earnest Manning. The program is administered by the Manning Foundation, a national non-profit organization funded by donations from businesses and private individuals.

This year, for the first time, all four winners are from Atlantic Canada. The Manning Principal Award winner was Nancy Mathis, who holds a doctorate in chemical engineering and is the 35-year-old President of Fredericton-based Mathis Instruments. Dr. Mathis developed a thermal effusivity sensor that detects the heat-transferring characteristics of a wide range of materials. This sensor is being used by companies around the world to test everything from the quality of pharmaceuticals to the safety of materials used in the aerospace industry. Dr. Mathis' award includes a \$100,000 tax-free prize.

The Manning Award of Distinction winner and the recipient of \$25,000 was Chris Griffiths, of St. John's, Newfoundland and Labrador. Mr. Griffiths invented the patented Griffiths Active Bracing System™, a one-piece glass fibre unit that forms the structural frame of all Garrison Guitars, which produces affordable, high-quality wooden guitars.

The two Innovation Award winners are from Nova Scotia, and they each received a \$10,000-dollar prize. Tim Edmonds, a professional engineer from Halifax who works with InNOVAcorp, was recognized for developing an air chamber crab processor that has transformed the fishery. The compressed air system safely and cost effectively removes the meat from hard shell segments of crab. The other Innovation Award winner is my friend Kirk Swinimer, a carpenter from Chester who was recognized for inventing a cone-shaped footing form for construction tubes. Mr. Swinimer's products, called BigFoot Systems, have drastically reduced labour costs for building decks, cottages and other structures with concrete post foundations.

We applaud these four individuals for their creative genius, and we congratulate them for the Manning Innovation Awards that they respectively received.

[Translation]

## THE HONOURABLE MADELEINE PLAMONDON

### CONGRATULATIONS ON RECEIVING THE NATIONAL ORDER OF QUEBEC

**Hon. Lise Bacon:** Honourable senators, if I may be allowed to sing the praises of a fellow senator, I wish to share with you my immense pride about an event which took place yesterday. I am sure all the people of beautiful Mauricie are proud of their senator, Madeleine Plamondon, who was awarded the National Order of Quebec in recognition of her contribution to the defence of consumers' rights and interests.

She has also thrown herself passionately into many other causes, such as the fight against poverty, respect for the rights of the chronically ill, women's liberation, and access to the legal system, as well as directing a number of studies on banking, insurance, and the protection of personal information in both the public and private sector.

To echo the words of Quebec Premier Charest, Quebec congratulates and thanks the men and women who have made exceptional contributions to the advancement of Quebec in all areas of human endeavour.

I wish to tell Senator Plamondon how very proud we are that she has been awarded the National Order of Quebec. This honour was much deserved.

• (1340)

[English]

## S.H.A.R.E. AGRICULTURAL FOUNDATION

### TWENTY-FIFTH ANNIVERSARY

**Hon. Lorna Milne:** Honourable senators, I rise to acknowledge 25 successful years of operation of the S.H.A.R.E. Agricultural Foundation, during which time this organization has helped thousands of poor people in a number of developing countries.

S.H.A.R.E. stands for "Sending Help and Resources Everywhere." The motivation to form S.H.A.R.E. was a visit to Kenya by David Armstrong of the town of Caledon, in Peel County, where he witnessed extreme poverty and hunger. After he returned home, David and his late brother Neil encouraged a number of dairy farmers in Peel and Halton counties to donate high-quality dairy cattle to poor countries where infant mortality was particularly high due to the lack of milk for infants and pregnant women.

S.H.A.R.E. was formed on the "pass on" principle. Herds of donated Canadian dairy cattle have been established in high-poverty areas on the basis that the offspring bulls are made available to local farmers to improve their native herds and that the milk produced by the donated herds is given to organizations to distribute to mothers and infants.

Hugh and Melba Beaty, a farm family in Halton County, gave up their farm operations to travel to South America with the first shipment of donated dairy cattle, to oversee the project and to ensure proper management of the cattle. A number of other farmers, including David Armstrong and Newton and Lorna Little, have visited projects from time to time to oversee their management and to ensure that the original objective of "pass on" continues to be met.

While S.H.A.R.E. was founded as and continues to be an NGO organization, CIDA has been a great source of advice and funding support. The involvement of local educational institutions, churches and organizations formed in the receiving countries to administer the projects has also been instrumental in the success of S.H.A.R.E. projects.

The members not only donate livestock, but also undertake broad fundraising from the wider Canadian community to finance other projects. For example, a funded project was the purchase of 75 water buffalo for donation to subsistence farmers living along the Amazon River, to provide milk, butter, cheese, meat and draft animal power for crop production. Funded projects must also be operated on the "pass on" principle. In this latter case, within a few years there was three times the number of water buffalo, which were, in turn, passed on to neighbouring communities where the need was urgent.

Funding has been provided to purchase equipment to increase rice production in West Africa, poultry projects in Jamaica, irrigation projects in Kenya, as well as livestock and poultry in Belize, Panama and Grenada. The list continues to grow. Over the past 25 years, more than 60 projects have been carried out in seven countries.

S.H.A.R.E.'s program of upgrading management skills in livestock, poultry and field crop production has greatly improved the success rate of projects and is now a key focus of their program.

The efforts and donations of the many people who support S.H.A.R.E. have helped alleviate poverty, hunger and death for thousands of people in the areas where there are no social safety nets. S.H.A.R.E. proves that individual Canadians can make a difference in alleviating poverty and hunger where the need is greatest.

Please join me in congratulating S.H.A.R.E. on 25 years of successful operation and for making a difference.

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

[Translation]

Thursday, October 30, 2003

## ROUTINE PROCEEDINGS

### TREASURY BOARD

#### REPORT ENTITLED "CANADA'S PERFORMANCE 2003" TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table the report of the President of the Treasury Board, entitled "Canada's Performance 2003," along with various departmental reports.

### CITIZENSHIP AND IMMIGRATION CUSTOMS AND REVENUE AGENCY

#### 2003 ANNUAL REPORTS TABLED

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, two copies of the document entitled "Annual report to Parliament on Immigration."

I also have the honour to table, pursuant to section 88 of the Canada Customs and Revenue Agency Act, chapter 17, and standing order 32(1), two copies of the report entitled "Annual Report to Parliament by the Canada Customs and Revenue Agency 2002-2003."

[English]

### STUDY ON ISSUES AFFECTING URBAN ABORIGINAL YOUTH

#### REPORT OF ABORIGINAL PEOPLES COMMITTEE TABLED

**Hon. Thelma J. Chalifoux:** Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Aboriginal Peoples, entitled "Urban Aboriginal Youth — An Action Plan for Change."

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

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

### THE FINANCIAL ADVISORS ASSOCIATION OF CANADA BILL

#### PRIVATE BILL TO AMEND ACT OF INCORPORATION— REPORT OF COMMITTEE

**Hon. Richard H. Kroft,** Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

### FOURTEENTH REPORT

Your Committee, to which was referred Bill S-21, *An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of financial Planners under the name the Financial Advisors Association of Canada*, has, in obedience to the Order of Reference of Monday, June 9, 2003, examined the said Bill and now reports the same with the following amendment:

*Pages 3 and 4, clause 5:*

Page 3: Replace line 32 with the following:

"by establishing best practices, promoting"; and

(b) Page 4: Replace line 15 with the following:

"(f) to promote and encourage ethical behav-".

Respectfully submitted,

RICHARD H. KROFT  
*Chairman*

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

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

• (1350)

### CRIMINAL CODE

#### BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Reports of Committees:

**Hon. George J. Furey,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, October 30, 2003

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### EIGHTH REPORT

Your Committee, to which was referred Bill C-45, *An Act to amend the Criminal Code (criminal liability of organizations)*, has, in obedience to the Order of Reference of Wednesday, October 29, 2003, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

GEORGE FUREY  
*Chair*

## OBSERVATIONS

**to the Eighth Report of the  
Standing Senate Committee on  
Legal and Constitutional Affairs**

Your Committee wishes it noted that the Honourable Senators Andreychuk, Beaudoin and Joyal, P.C. have strongly objected to the fact that they believe that they have been unable to adequately fulfill their legislative duties. This has occurred because of a scheduling conflict with another Senate Committee, which was sitting outside its regular time.

Your Committee is sympathetic to these members' concerns and agrees that standing committees which are meeting during their regularly scheduled time should be given priority.

Your Committee believes that this issue must be brought to the attention of the Senate in order to ensure that this situation does not occur again.

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

On motion of Senator Moore, with leave of the Senate and notwithstanding rule 58(1)(b), bill placed on the Orders of the Day for third reading later this day.

## THE SENATE

NOTICE OF MOTION  
FOR WEDNESDAY ADJOURNMENTS

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, pursuant to an exchange of yesterday afternoon, I give notice that, with leave of the Senate and notwithstanding rule 58(1)(h), later this day I will move:

That, for the remainder of the current session, when the Senate sits on a Wednesday it do adjourn no later than 4:00 p.m.;

That, if the business of the Senate has not been completed at 4:00 p.m., the Speaker shall interrupt the proceedings and the Senate will remain suspended until 8:00 p.m., and

That, should a vote be deferred on a Wednesday until 5:30 p.m. the same day, the Speaker shall interrupt the proceedings at 4:00 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred vote.

[Translation]

## OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA—  
PRESENTATION OF PETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, pursuant to rule 4(h), I have the honour to table in this chamber

1,000 additional signatures, for a total to date of 15,000 signatures, on a petition to declare Ottawa, the capital of Canada, a bilingual city, reflecting the country's linguistic duality.

The petitioners are calling on the Parliament of Canada to consider the following:

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

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

[English]

That citizens have the right in the national capital to have access to services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;

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

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the Constitution Act, from 1867 to 1982.

## QUESTION PERIOD

## THE SENATE

## SCHEDULING OF COMMITTEE MEETINGS

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. Is she aware that the Standing Committee on Rules, Procedures and the Rights of Parliament met this morning outside of its normal hours?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I was aware that the Rules Committee met this morning. I understand there was some discussion of the subject in the chamber yesterday afternoon, although I was not present in the chamber at that time.

**Senator Stratton:** For the record, honourable senators, the committee met yesterday at noon during its normal time slot. Prior to that meeting, a notice went out requesting agreement from both whips that a meeting be scheduled for this morning at 10 o'clock. As whip on the opposition side, I could not agree to that request because of the commitment on the part of our members to other events that were taking place this morning, that is, other committee meetings.

For the record, just so that honourable senators will know and be aware, for example, today the Standing Senate Committee on Legal and Constitutional Affairs was reviewing the Westray bill. Our members of the Standing Senate Committee on Legal and Constitutional Affairs who are also on the Rules Committee are Senators Andreychuk and Beaudoin. It is mandated by this Senate chamber that those committee members attend those committee meeting.

Senator Oliver, who is Chair of the Agriculture Committee, met with his committee at 8:30 this morning, as mandated by this Senate chamber.

Senator Robertson and myself were attending a meeting of the Standing Committee on Internal Economy, Budgets and Administration, as mandated by the Senate chamber. We were discussing Supplementary Estimates and the budget for the next fiscal year in detail, line by line.

Five members of those various committees are also members of the Rules Committee. We could not cover both. The decision on our side was that we could only attend those committees that were mandated by this chamber. We could not, therefore, attend the Rules Committee meeting that was arbitrarily set by the chair to meet at 10 o'clock this morning, despite the objection of this side. Would the minister care to comment, please?

**Senator Carstairs:** As the honourable senator knows, the whips on both sides of this chamber have the option of substituting members for all committees. That is a common practice in this chamber; it is done with great regularity.

**Senator Stratton:** Forgive me, honourable senators, but I disagree. You do not throw someone into a committee meeting to deal with an issue as complicated as the ethics bill and the ethics package who does not have the intimate knowledge held by those senators who have been attending on a regular basis. This is not a case in which you just throw someone in for the sake of having a member there, because that individual will know nothing about the issues. It is wrong to do that. That practice should cease because we do not have sufficient numbers to support it.

• (1400)

**Hon. John Lynch-Staunton (Leader of the Opposition):** We are trying to get from the Leader of the Government some support and sympathy for the situation in which the opposition finds itself. It is difficult to staff committees within the present time slots, but I think we are doing a reasonably good job because we know in advance when committees will sit.

We were advised only the day before, without any discussion in the Rules Committee, without any request by the chair of that committee of the members present for their input, that we would be sitting on a day and at a time that was not previously scheduled. As has been explained, our five members had commitments to other committees. It is easy to say that we can

substitute, but it is not our practice to send benchwarmers. We do not send senators to represent us at committees just to boast that we have our numbers there. We send people for the purpose of continuity, and that continuity could not be upheld this morning at the Rules Committee.

I am asking for some understanding of our situation. It is impossible for the opposition to be in all places at all times, unlike the other side, which has enough members to do so.

I am told that the Rules Committee has now decided to meet tomorrow at 10 o'clock. I understand that it is unlikely that the Senate will be sitting, although perhaps it will be. In the event that we are not, certain senators have already planned to leave for their homes today.

I also understand that that committee will not hear any more witnesses this week, although I understand that there are witnesses on the list who might be available next week, and not the most insignificant ones, yet we are told that clause-by-clause consideration must be done tomorrow.

Since this has all been done under the government's direction, why are certain agreements and traditions being broken? Why is the scheduling of committees being broken? What is the urgency that requires this committee to meet on a day that the Senate may not be sitting?

**Senator Carstairs:** To deal with the last question, I think that is the preferred option, given the objection to sitting at times when committees are in conflict. Generally speaking, no committees sit on Fridays. I made it clear some time ago that the Senate would be sitting on Mondays and Fridays. However, I am prepared to forgo our sitting on Friday in order for this committee to sit and spend the time needed to work on this bill.

I was in the committee on Tuesday at 11:30 when it was announced by the chair that the steering committee would meet. My understanding is that a decision was made then that they would sit Thursday. Therefore, in fact, there was two days' notice.

**Senator Lynch-Staunton:** My point is that there was no consultation with the members of the committee. The courtesy was not extended to them of asking whether it was convenient for them to sit on Thursday at a specified hour. Had that been done, the members would have said no, but would have asked about another time. However, there was no discussion. The date and time was unilaterally imposed to meet a deadline that has yet to be explained.

**Hon. A. Raynell Andreychuk:** To correct the record, the steering committee was not unanimous. The position of this side, which has already been articulated, was put forward to the steering committee. The government side insisted on proceeding despite this side indicating its difficulties. Therefore, I was, in essence, outvoted in the steering committee. The matter was not raised in the committee. Our whip spoke against it because we did not have sufficient members.

The Standing Senate Committee on Legal and Constitutional Affairs was mandated this morning to deal with the Westray bill, an incredibly emotional and important bill. I do not believe that members could very quickly be changed to sit on that committee. It was shameful that there were three members from the opposition and three members, then eventually four members, of the government, when there should have been a full complement for a bill of such importance.

People had travelled here and waited a long time, and the chair gave compelling reasons why we should, as we were mandated by the chamber, go to clause-by-clause study immediately. It was noted on the record that that is not the way in which the Senate operates, but we did the best we could in that committee.

There was no compelling emergency pointed out in the other committee. I think it would be wrong to say that there was two days' notice. There was an indication of the government's wishes, to which this side responded negatively due to the lack of members available for that time slot.

**Senator Carstairs:** The honourable senator raises the Westray bill, and I must say I am delighted with the speed with which it was reported to this chamber. Having said that, however, we have only been dealing with the Westray bill this week. We have managed to take it through first and second readings, committee stage, and later this day we will go to third reading stage, which is a remarkable accomplishment for any legislation.

On the other hand, we have been dealing with the ethics package for over a year. It seems to me that if there was any urgency on any legislation, it was with respect to the ethics package.

**Senator Andreychuk:** I do not believe that is fair. Perhaps the Leader of the Government could read the record of the Standing Senate Committee on Legal and Constitutional Affairs. That record does not reflect well the way senators normally work, to go through first and second readings, clause-by-clause consideration and third reading so quickly. We were not given the time we should have had to study that bill. However, there was compelling human emotion and dynamic. These people who lost family members in Westray have been waiting for a very long time. If I felt that there was a gun put to my head in order to pass that bill, it was because of those people who died.

Where is that element in the code of conduct?

**Senator Carstairs:** Honourable senators, that sounds very emotional and wonderful. However, as the honourable senator knows full well, the Westray bill, as it is now called, does not impact on that terrible suffering. It is hoped that it will deal in the future with companies and individuals who act in an irresponsible way, and that is good. However, I understand that the legislation is not retroactive.

[ Senator Andreychuk ]

**Senator Andreychuk:** It is not a question of retroactivity. Would the Leader of the Government not agree that the people who were touched by Westray have been the guiding force to have this bill passed in order that no more families will suffer as they did?

**Senator Carstairs:** I could not agree more with the honourable senator. Having been at Springhill when that disaster occurred, and having worked with the volunteers who were providing relief, no one understands that better than I do.

[Translation]

**Hon. Gérald-A. Beaudoin:** Honourable senators, I would like to come back to the explanation given by the leader of the opposition. There are not many of us on this side. Speaking for myself, I sit on several committees, including the Committee on Rules, Procedures and the Rights of Parliament, the Committee on Legal and Constitutional Affairs, the Committee on Human Rights, and the Standing Senate Committee on Official Languages.

• (1410)

This morning, I gave priority to the Committee on Legal and Constitutional Affairs because I am the deputy-chair of that committee. But I am also a member of the Committee on Rules, Procedures and the Rights of Parliament, which was sitting at the same time. We should establish a policy whereby we do what we can. It is humanly impossible to be in two places at once — at least, as far as anyone knows. We will have to come back to this. It may be difficult, but we have no choice; we have to find a solution!

[English]

**Senator Carstairs:** Honourable senators, it is true that the numbers on the other side are decreasing. The experience is one that I know full well, having been the lone member of my party in a legislative assembly from 1986 to 1988, when three committees would sit at the same time. Since I could not divide myself physically in three, I had to make choices. Honourable senators on the other side will have to make choices as well.

**Senator Lynch-Staunton:** You knew when they sat, though.

**Senator Andreychuk:** Honourable senators, I have a supplementary question regarding the choices.

We had an agreement. Perhaps it was by convention and, if so, perhaps it should be a rule. We know those choices have to go beyond, to balance an individual senator's needs and experiences, and the management and conduct of the work done by the opposition. In a democracy, the minority opposition has to be taken into account. I thought we had an agreement between both sides that the whips would manage the work and that it would not be at the call and discretion of the chair, which could lead to difficulties. I thought it would be managed by the leadership. Therefore, both whips had to agree to set the time.

Surely, our consideration of the Westray and code of conduct matters could have been taken into account and been deferred a day or two when our whip said he could not manage because of the intensity of the workload.

To the credit of Senator Baker, Senator Moore and Senator Beaudoin, who have the legal skills to address and do some justice to the Westray bill, at least we can say we questioned the legislation. In the past, we have been chastised in the courts for not doing our jobs, for pushing through bills and rubber stamping them. We do not want to be rubber stamps. That is why we needed particular senators at the committee. They happened to be the same senators who were at the Rules Committee. We did not have the benefit of Senator Joyal, who has raised many Criminal Code issues and particularly the codifying of certain sections.

Again, I thought we had an agreement between the leadership or an agreement of this house that we would not sit unless the leadership said yes. That agreement was violated when our whip said no, and that is a personal choice that is incredibly difficult to make.

**Senator Carstairs:** Honourable senators, there is no rule of the Senate, as the honourable senator knows. We have done everything we can to accommodate the other side. The whips have been able to agree many times, but today is one of those times when it is not possible.

**Senator Lynch-Staunton:** So who cares? Roll on, steamroller.

**Hon. Donald H. Oliver:** Honourable senators, I am a member of the Standing Senate Committee on National Finance, which meets at the same time as the Rules Committee. Some honourable senators would know that I have a very big interest in the so-called code of conduct or ethics package. It is something that I have been working on since coming to the Senate many years ago. Indeed, a portion of it culminated in a report that was tabled in this chamber in 1997.

I attended the meeting of the Rules Committee yesterday and did not attend the meeting of the National Finance Committee, which was meeting at the same time. I found that the debate and the questions asked were extremely important and very thorough. For instance, Senator Grafstein raised a very important issue about whether the issue is really one of personal ethics or a question of a code of conduct. That is something that must be addressed further.

Throughout the other hearings I have attended in the Rules Committee, there have been very serious and important questions raised about the privileges of members of this chamber. Even more important questions have been raised about the effects on those privileges by certain judicial interference, judicial activism and judicial interpretation of the rules of this chamber. That points to the fact that there are still very important matters in the bill before the committee that bear hearing from important witnesses, like former Justice La Forest, experts such as Donald

Savoie and many others. To cut off debate and to cut off the right of these witnesses to appear before the committee to give committee members the benefit of their expertise and their views is intrinsically wrong.

I was at yesterday's meeting and knew nothing about the meeting this morning at 10 o'clock. This morning at 8:30, I was chairing an important meeting of the Standing Senate Committee on Agriculture and Forestry. We had senior officials from the Department of Agriculture and Agri-Food appearing before us on the BSE issue. I raised a question yesterday in Question Period about BSE, and it is something that affects farmers in a major way. We are talking about an industry that produces more than \$4 billion in assets for Canadians each year. BSE is a crisis. It was an important meeting.

For this and for several other reasons, does the Honourable Leader of the Government in the Senate agree that natural justice and general fairness are being denied by not affording us an opportunity to sit on important committees and to participate meaningfully in debates on something as important as the privileges of members of this chamber?

**Senator Carstairs:** Honourable senators, it is interesting that we have heard discussion today from those who were mandated to appear by the Senate on this committee. I have raised the issue of substitutions. It is interesting to note that the original senators mandated to sit for the opposition were Senators Andreychuk, Di Nino, Robertson, Stratton and Murray. Obviously, substitutions have been made on their side. I respect that. That is the right of the Senate. Substitutions could have been made again today.

**Senator Stratton:** Honourable senators, our membership on that committee has been consistent. Senator Murray had surgery. He cannot attend. He cannot drive an automobile. We did put someone there. For goodness sake, that is a ridiculously stupid argument — and forgive me — because we have been consistent in our membership on that committee this entire session.

**Senator Carstairs:** With the greatest of respect, I would refer the honourable senator to the Committee of Selection, the alphabetical list of committees, which says that the members at the time of the Committee of Selection were Senators Andreychuk, Bacon, Carstairs, Robichaud, Di Nino, Grafstein, Joyal, Losier-Cool, Lynch-Staunton, Kinsella, Milne, Murray, Pépin, Pitfield, Robertson, Rompkey, Smith, Stratton and Wiebe.

**Hon. Brenda M. Robertson:** Honourable senators, usually we work in this chamber with a degree of courtesy. I am the deputy chair of the Standing Committee on Internal Economy, Budgets and Administration. The Internal Economy Committee has a specific time slot and we sit at that time. There is absolutely no way I could have gotten to the Rules Committee. I did not want to miss the Rules Committee meeting because if that committee ever comes to a decision on what to do, for instance, with *Vaid*, it comes to the Internal Economy Committee to find the money.

I enjoy the Rules Committee, but I find it very disheartening, very discouraging, when a chair, without discussing it with anyone — not our whip, not our leader — decides to hold meetings any old time at all.

• (1420)

I know what you are saying: Fill in with someone. We have some heavy legislation right now, legislation that impacts so much on this chamber and on the people whom we represent. If the legislation were even of a more casual nature, I would not be so offended.

I cannot go to the meeting tomorrow. Other plans have been made for me. I do not make my own plans. I make a lot of them, but I try to work in cooperation with my colleagues. That is what this is all about. If the government leader cannot and will not do anything about the meetings, I hope she will express to the chair that she is behaving in a manner that does not do any favours for this chamber. If we do not have the ability to be courteous to each other, it is a sad state of affairs and it should not be allowed to continue.

**Senator Carstairs:** Honourable senators, the chair of this committee did not act without discussing the scheduling with others. She called a steering committee meeting for 11:30 on Tuesday. All members of that steering committee attended. You are quite right; Senator Andreychuk did not agree with the decision taken, but to say that the chair did not discuss it with anyone is simply not true.

Honourable senators, I very much respect the fact that Senator Robertson attended the Standing Committee on Internal Economy, Budgets and Administration. It is my understanding that that committee adjourned at 11:00. The Rules Committee continued to sit until 1:30. Therefore, the honourable senator could have been at the Rules Committee for two and a half hours.

I do recognize the pressure on the other side, given your limited numbers. Unfortunately, I have no ability to appoint additional opposition members to the other side.

**Senator Lynch-Staunton:** Why is it that the government leader has a complete misunderstanding of our position? She is suggesting to us that we should keep our agendas open and wait endlessly for the government's schedule. What the government leader does not seem to accept is that a decision to sit on Friday was given to all members of the committee this morning. It was not even discussed in committee yesterday, Wednesday.

Sitting this morning was not discussed Wednesday in committee. Yes, the steering committee met. Yes, the majority agreed. Fine. However, that information was not given to committee members as such. They were not even asked if they all agreed. The method of informing committee members was by the traditional notice that goes out.

The transcript does not show any statement by the chairman to the effect that the committee would be sitting this morning. In addition, and even worse, a notice comes out to say that it will also sit on Friday. No discussion in committee. No canvassing of members. No basic courtesy to ask about the Senate schedule.

While the Senate does not usually sit on Fridays, still there was no effort to find out whether the Senate would be sitting, first. That was not done. If in fact it were done, certainly we have not been informed as to whether we are sitting on Friday. I hope the chair was not given privileged information.

Second, on the assumption that we are not sitting on Friday, all senators make arrangements to be elsewhere.

The government leader told Senator Robertson that Internal Economy adjourned at 11:00 and that, as such, she should have hurried over to the Rules Committee, which sat until 1:30. Is the government leader listening? Internal Economy did not stop at 11:00. It sat until 12:30. For the government leader to suggest to Senator Robertson that she should leave one committee and rush to another one, as if her agenda has to be tailored to the priorities of the government, is unheard of.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I sat on the committee and have sat on the committee for some time. Today was a very difficult day for me, as a member of this side. Over the years, I have been very clear that I do not think a committee has legitimacy unless both sides are represented at committee. Otherwise, there is no ethical legitimacy.

As a result, when the deputy chairman of the committee moved adjournment in a voice vote, I supported that, and I want to go on record as having done so. Why? I feel that that action is very unparliamentary and contrary to *lex parliamenti*. There is an opposition in the Senate, prepared and eager to participate. Because of scheduling mandated by this house and an emergency matter before the committee, the committee is caused to meet at an extraordinary time. That puts members opposite in an invidious position. That makes me feel, as a senator, that my privileges in effect have been offended because I do not feel I am being fair to the opposition or to the subject matter.

I welcome the comments of Senator Andreychuk and Senator Beaudoin. They have been following this matter very carefully. We proceeded with two witnesses. The second witness had not even read the bill. He had not even read the bill. Then we were told that if we can get another witness — and others will speak to that — we would hear that witness and then go into clause-by-clause consideration. We really have not spent any time, quite frankly, on clause-by-clause discussion; that just started today. This is the first time we focused, not on the principles of the bill but on what is in the bill itself.

[ Senator Robertson ]

I urge the government leader and our chairman and other honourable senators on our side to think very carefully about how we proceed here. We are dealing with an ethics bill. I have some questions about this ethics bill because, as one of the witnesses said, the problem with ethics is that they go beyond the law. I like the rule of law. I have difficulty when it comes to going beyond the rule of law, because it is not clear to me as to what it is.

Therefore I ask the government —

**The Hon. the Speaker:** Honourable senators, I am sorry to advise that the time for Question Period has expired. I see the government leader leaving, so we will move to Orders of the Day.

[Translation]

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, under Government Business, Reports of Committees, I would like to call Item No. 1, the report of the Standing Senate Committee on National Finance, and then return to the order proposed in the Order Paper.

**Hon. Marcel Prud'homme:** Honourable senators, could we have a clarification? That is not what I see.

**Senator Robichaud:** Honourable senators, I am referring to the *Order Paper and Notice Paper* placed on the desk of every honourable senator. Every senator has a copy. On page 14, under Reports of Committees, I wish to call Item No. 1 first, and then return to the order proposed in the Order Paper.

[English]

### THE ESTIMATES, 2003-04

#### REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Biron, for the adoption of the ninth report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2003-2004), presented in the Senate on October 22, 2003.

**Hon. Gerald J. Comeau:** Honourable senators, I am pleased to enter the debate on Supplementary Estimates (A).

The Standing Senate Committee on National Finance heard from Treasury Board on the Supplementary Estimates at two meetings, one on September 30 and one, a week later, on

October 7. Originally, there was only to be one meeting, but a second meeting was needed to receive delayed answers to several questions that had been raised at the first meeting.

• (1430)

The fact that the second meeting was needed underscores some of the barriers that we face when we try to study Estimates. We are simply not provided with enough information to give proper scrutiny to the funding requests that are placed before us.

Let me preface my remarks by saying that I very much appreciate the efforts made by officials from Treasury Board to respond to our questions. They are often placed in a position where they must come prepared to answer dozens of questions on votes from several different departments, and they cannot anticipate every possible question. For that, we have to give them a great deal of sympathy. They must rely heavily upon other departments to ensure that they are properly armed prior to their visit to our committee. Further, given that they are public servants, they are limited in their ability to respond to questions of policy, particularly when those policies are those of other ministries.

We ask questions, and sometimes Treasury Board officials cannot answer them; sometimes they can only promise to get back to us. Very simply, neither we nor Treasury Board are given enough information prior to our first meeting. The information in the Blue Books is very thin. Explanations tend to be no more than a couple of lines, and often those explanations are meaningless. Sometimes even the wording of the various votes can be confusing. To give you an example, on page 47, we found that vote L30a, which read as follows:

Vote L30a — The issuance and payment of non-interest bearing, non-negotiable demand notes in an amount not to exceed (\$193,500,000 - \$96,500,000) \$97,000,000 in accordance with the *International Development (Financial Institutions) Assistance Act*, for the purpose of contributions to the International Financial Institution Fund Accounts...

Anyone who tries to go through that kind of garble has to earn a Ph.D. in finance. I will translate what it means. The bottom line is that this reduces the assistance voted in the Main Estimates. That is what it means. It may have been simpler just to say that "This is to reduce to \$97 million the amount voted in the Main Estimates," but simplicity and clarity is not what the supply process is all about.

Senator Doody asked the officials what the International Financial Institution Fund Account was and they did not know what this institution was. Honourable senators, I realize that some of the questions may be unexpected, but the Canadian International Development Agency should have ensured that this was in the officials' briefing book. It should not have been necessary to ask the question. The Estimates documents themselves, or some other document made available to us prior to the meeting, should have given a very short, concise explanation of what this account is.

This is not the only example of confused wording. For three consecutive days after these Estimates were tabled, senators on this side raised the matter of funding for the firearms registry. Vote 7a ends with the wording “to provide a further amount of” and we look across the page to see a column that is headed by the words “new appropriation,” the sum of \$10 million. To almost anyone, common sense would have said that this means that there is an extra vote of an extra \$10 million to the gun registry. However, somehow, these very clear words at the top of page 88 of the Supplementary Estimates book are superseded at the bottom by the words:

This amount represents the operating budget carry forward for Justice designated for the Canadian Firearms Centre.

The government argues that that is not new money, merely money that the department is allowed to carry forward from one year to the next. Parliament is being asked to approve the vote carry forward some six months after the fiscal year ended. Why then, honourable senators, is the vote not worded to the effect of: “To allow the department to carry forward funds voted but not used in the 2002-03 fiscal year”? That would make things clearer for parliamentarians.

Honourable senators, no matter how this is labelled, the bottom line is that we are voting the gun registry an extra \$10 million this fiscal year over and above what was voted in March and June. To suggest otherwise simply clouds the issue, and is not true. For that matter, how are we to know that, in fact, this money was left over from the budget of the Canadian Firearms Program? The explanation simply says, “operating budget carry forward for Justice designated for the Canadian Firearms Centre.”

The money we voted last year fell under the umbrella of Justice vote 1 “operating.” The Canadian Firearms Centre may have been part of the explanation for last year’s Justice vote 1, but explanations do not have the force of law. Justice vote 1 covers expenses such as salaries of departmental lawyers, translation of the minister’s press releases, new justice initiatives, crime prevention, travel of public servants to conferences and the department Web site, to give but a few examples.

How did exactly \$10 million come to be designated for this one purpose but not for the others? The official version of that answer has something to do with Bill C-10 not passing last year. However, I note that the Supplementary Estimates include \$11 million for Justice vote 1b “operating,” a figure not that far removed from the extra money for the registry. The Justice vote is mainly for the Child-centred Family Law Strategy and the Integrated Proceeds of Crime Initiative.

Why was the amount carried over from this umbrella Justice vote 1 not applied to these other purposes rather than to the

Canadian Firearms Centre? It is, perhaps, because the government gets points for new spending in those areas but loses political capital if it spends more money on the gun registry.

In committee, I focused my questions on the Canadian Firearms Centre, which the government has now turned into a full department. Given that this is beyond any doubt the most controversial item in the Supplementary Estimates, it would have been useful to see extensive written material explaining the budget of this new department. Given that consultants ate up more than half of its resources, it would have been helpful to find out and to be told at the outset that most of this was for computer services.

I asked how many employees its salaries and wages budgets of \$22.6 million covered, and learned a week later, at the next meeting, that this was for 279 employees, of whom 153 are clerical. A quick bit of math told me that this works out to approximately \$81,000 per employee, a figure confirmed by the Treasury Board. Maybe I am showing my age, but even if you consider that this includes benefits, it does seem a bit on the high side for an organization where more than half of its staff is, in fact, clerical.

These Supplementary Estimates also transfer to this new department and the RCMP some \$105 million that was originally voted to Justice in the Main Estimates. I know that the registry is controversial. Some senators support it; others do not. I understand as well that the argument that created the separate department would provide some increased element of control and accountability, although at the same time, as a separate department, it will face other costs.

Let us put aside for a minute the issue of whether there ought to be a firearms registry — I hate to put that aside, but I will for a few minutes — and how it ought to be structured, and focus on the way this transfer of funds has been presented to Parliament.

Senators on this side were troubled in committee at the way in which the transfer is recorded in the Summary of Changes to Appropriations table at the front of the Supplementary Estimates. Normally, when funds are moved from one vote to the other, the net result is a zero. If you turn to page 12 of Supplementary Estimates (A), within the Department of Justice, the same department from which the firearms money comes, we also see \$45 million transferred to a new entity — the Courts Administration Service, under vote 27a. However, this is shown as being offset by an equal amount under Justice votes 30 and 55. It has no effect on the total Estimates.

Further, in the past, even transfers between departments have been shown as a net zero on the total Estimates, an example being last year’s transfer of CMHC from the Privy Council to Transport. Yet, when we get to page 14, we see total transfers of \$105 million. No adjustment was made in the presentation to subtract the funds transferred to the Canadian Firearms Centre for Justice votes 1 and 5. Therefore, \$105 million is added in with the voted items to give us total voted funds of \$64.7 million.

• (1440)

We checked back over several years and could find no other instance in Supplementary Estimates where the total transfer was anything other than zero. We asked about this, and at first Mr. Mike Joyce from Treasury Board tried to defend it on the basis that, "It goes to the clarity of the document." It seems that the Treasury Board wanted to ensure that we saw that it was a transfer. That is why this transfer is shown in this way, while others in the same set of Supplementary Estimates were netted out. This is not a terribly consistent way to report to Parliament.

There was an exchange of views between Mr. Joyce, on one hand, and Senator Lynch-Staunton and myself, on the other. Mr. Joyce agreed to look further into this. To his credit, he returned to the committee the following week and said:

To confirm the response I gave last week, Mr. Chairman, the treatment of the transfer from the Department of Justice to the Solicitor General is not consistent with our previous practice.

It was done with good intentions because we wanted to ensure it was visible. I believe we achieved that objective.

However, it is inconsistent with previous practices. You have my assurance that the next time we do this we will ensure a consistent treatment of transfers.

Honourable senators, part of the problem with this particular accounting is that it creates a difference between the spending authorities that have been requested through legislation and the authorities that are shown to have been requested in the Supplementary Estimates.

Thus, the information presented to Parliament is factually incorrect. In an attempt to ensure that we got the message, the Treasury Board gave us numbers that very simply did not add up. When the supply bill becomes law, we have only voted \$64.6 billion, yet, according to the Supplementary Estimates, we will have voted \$64.7 billion. Once again, Parliament has not been given accurate or meaningful information.

Honourable senators, I will conclude by again stressing the need for Treasury Board to give more information and to put clearer information in the documents that it provides to Parliament in support of the government's spending proposals.

Some of us are trying to find the time to attend one committee meeting after another, and we are sometimes called upon to act as warm bodies, as the Leader of the Government on the other side suggests should be done, a view with which I disagree entirely. Honourable senators, we need to be able to not only wade through this material but also to understand it so that we can present good, meaningful reports back to this whole chamber with the kind of information that you depend on us to provide. This cannot be done if we have only "warm bodies" sitting in on a

committee that deals with extremely complicated matters such as this. We must be able to spend enough time to wade through the information that is provided to us in order to evaluate the Supplementary Estimates and the Main Estimates. You cannot always depend on your research staff. We must be able to do this ourselves in order to understand it fully. To achieve this, Treasury Board must provide documents that we can read, understand and digest. This information should be consistent from presentation to presentation and it should be accompanied with clear, concise and easy-to-understand explanations regarding changes and departures from previous procedures.

I recommend that everyone read the Supplementary Estimates. They are great reading. If you want to fall asleep around 11 o'clock in the evening, they will certainly help you do that. Thank you very much.

**Hon. Ethel Cochrane:** Would the Honourable Senator Comeau take a question?

**Senator Comeau:** I certainly will.

**Senator Cochrane:** My question relates to the firearms registry. I understand that we have already spent \$1 billion on the firearms registry.

**Senator Lynch-Staunton:** Not yet, but we are getting there.

**Senator Comeau:** We will be there in just a few weeks.

**Senator Cochrane:** Is this more money that will be added to what was to be the final figure?

**Senator Comeau:** No. For a period of time in the previous fiscal year, \$10 million had not been spent. The department requested that this be carried forward, but, as it was worded in the Supplementary Estimates, it appeared to be a new appropriation. Obviously, that set the alarm bells off in some of our minds. Some of us saw it as a new appropriation of \$10 million, so, obviously, we were going to question it. Once we did, we found out that it was not a new appropriation. Even though it is called a new appropriation, it is in fact money carried over from last year. According to the officials of the Treasury Board, it is not new spending which has been placed in the Supplementary Estimates.

**The Hon. the Speaker:** I would advise that Senator Comeau's time to speak has expired.

**Hon. C. William Doody:** I wish to say just a few words, honourable senators. Senator Comeau and Senator Oliver have pretty well covered the points I want to make. However, I do want to emphasize the fact that the examination of the Estimates by the Standing Senate Committee on National Finance is of absolutely tremendous value to the whole process of government accountability. No one else in this huge labyrinth takes any time or effort to examine the billions and billions of dollars worth of funding that goes into government expenditures every year.

It is important that the Senate Finance Committee be given ample time to examine these Estimates and, more important, that it be given ample information to make its work meaningful and helpful. One of our problems is that we spend so much time asking questions about votes that should already have been explained in the documents that we are given, that we use up most of the valuable time that we should be spending examining the purpose, the intent and usefulness of the expenditures themselves.

A case in point is the Canadian Heritage vote 70a. We are voting \$31 million to the National Capital Commission. We are told in the explanatory notes that this is for the purpose of acquiring real property in Gatineau, across the river from here. No background information is provided beyond that. We are not told what the government plans to buy, what the purpose of it is, or where the money will go. It is just that they want to buy some real estate across the river. The Treasury Board officials had to look it up. They had to go out and find the information and bring it back to us. As it develops, they were able to tell us the money will be used to buy the Scott Paper lands across the river. No one can quarrel with that. The intent is admirable. It will be an additional asset to the National Capital Commission and to our site.

That is the sort of situation that we run into all the time when dealing with the Estimates.

Senator Comeau quite properly commended the representatives from Treasury Board for being so open and helpful in trying to provide the information to us. Had we been given adequate briefing material to start with, I think we would have saved them a lot of embarrassment and saved ourselves a lot of time, and the people of this country would have been far better served.

Even when we got the information on this one small item — \$31 million is a small item now — the whole process was still suspect. The deal was struck, or was it really struck, or was it just an agreement in principle? Did the National Capital Commission have \$31 million left in its budget to buy this, or did it have to wait to get parliamentary approval? Those questions are still up in the air. We are told that they struck an agreement in principle, depending on parliamentary approval, so we are giving them the benefit of the doubt and saying that is what happened. Still, the NCC is one of these independent agencies that operates outside the umbrella of parliamentary scrutiny, to a large degree, and it has been the subject of some examination by your committee on previous occasions. I have no doubt we will be hearing from them again before too long.

Another major problem for us is this habit that Treasury Board is developing in spreading funding requests or appropriations over various subheads and over various departments. You would need to be a Sherlock Holmes with a staff behind you to be able to track down how much a particular project actually costs. The Canadian Land Mine Fund is an example. Everybody knows that

the Canadian Land Mine Fund is an admirable exercise in civilizing parts of the world that desperately need help, but trying to find out how much money the people of Canada are actually devoting to this cause is an exercise in frustration.

• (1450)

We eventually discovered that there are four different votes for the Canadian Land Mine Fund under four different departments and four different areas, and nowhere in the Estimates was there anything to show that one could look elsewhere to find additional funds. We just had to thumb through these pages and pages of the Blue Book to try to get on to it.

Why would we say that the landmine fund was suspect in the beginning? We would not. It is a perfectly normal allocation of funds. Why do they make life difficult for parliamentarians to scrutinize their work? I have no idea. I suspect it is just the strange and wonderful way the bureaucracy works.

There are various other items of interest, of course. One of greatest interest and concern relates to a question that Senator Cochrane just raised. Put shortly, it is how much is the gun registry costing. I defy anybody in either House to be able to answer that question with a sum total that is anywhere close to being accurate. There are numbers that have been shifted from department to department, have been carried over, shifted back and sent elsewhere.

With respect to the numbers of employees, one question we asked somewhere along the line was how many employees did the registry have, and we were told there were none. That defies the imagination. How can they manage to spend hundreds of millions of dollars with no employees? They manage to do it. These people are not actually working for the gun registry. They are seconded from this department, that department and some other department. Later on, when we get it all put together, it will have a separate entity of its own, and then they will be employees of the gun registry, and we will have real people about whom we can report to you. In the meantime, as Senator Comeau has pointed out, the miracle is that only that many people are working there because, at \$81,000 a head, it is a wonder they have not been trampled to death with applicants.

I suspect that \$81,000 a head is not quite accurate, either, but those are the numbers we were given and they are the numbers we have to work with.

I will not detain honourable senators any longer, except to say that the time and effort that the Finance Committee spends on examining these Estimates is probably some of the time best spent by any committee in either of the two Houses. I think the departments of the government should be more forthcoming and should be spending more time and effort in providing us with the information that we need to do our work.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I listened with interest to the comments of both Senator Comeau and Senator Doody. It seems to me they have both requested a very legitimate thing: that perhaps we should make this whole process more user-friendly on the basis that the parliamentarians are the users of these Estimates, and if they are to do their job appropriately, it needs to be made easier for them.

In light of that, let me assure my colleagues that I will write to the minister of the Treasury Board, include your comments in my letter and add my voice to making these Estimates more user-friendly in the future.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** Those are welcome statements. Before adjourning the debate, I would like to tell the minister that the *Backgrounder*, a separate document that comes with the Blue Book, has more information insofar as describing the purpose of the Estimates than the Blue Book itself has. We are just asking that the two be integrated. It is a simple request, which thus far has been ignored.

On motion of Senator Lynch-Staunton, debate adjourned.

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before going to the next item, I wish to draw your attention to the presence in our gallery of three people: Claudine Tayaye Bibi is President of the Programs for the Call to Women's Action in the Democratic Republic of the Congo. Mary Okumu, Regional Coordinator of El Taller Africa, is from Kenya. Kemi Ogunsanya is a senior conflict resolution training officer with the African Centre for the Constructive Resolution of Disputes. She is from South Africa. All three are members of Women Waging Peace, and they are the guests of Senator Jaffer.

Welcome to the Senate of Canada.

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

#### LIBRARY AND ARCHIVES OF CANADA BILL

##### SECOND READING—DEBATE SUSPENDED

**Hon. Sharon Carstairs (Leader of the Government)** moved second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

She said: Honourable senators, I am pleased to have this opportunity to speak in favour of Bill C-36, the Library and Archives of Canada Act. With this piece of legislation, the government intends to create an important new institution, one that will play a central role in the preservation and promotion of Canada's documentary heritage.

I am encouraged to note that there is a growing demand for this kind of information among Canadians. From coast to coast, the people of this land want to know more about the history and culture of their country, whether it is the genealogical details of their family, the wonderful achievements of our writers and musicians, the contributions made by members of their community to the growth and development of Canada, or, perhaps, even the role played by the Government of Canada at some defining moment in our history. That is why I am so pleased to take part in this debate.

After studying this bill, it is clear that it will give Canadians a new, modern cultural institution. This new institution will have the tools it needs to protect and promote our country's documentary heritage. It will give Canadians the opportunity to satisfy our thirst for knowledge about all of the many facets of our country.

The new knowledge institution created as a result of this bill will be the ideal resource to achieve these goals. One of the ways the Library and Archives Canada will do that is with a new mandate, one that is broader than those of the two existing institutions from which it will spring.

By merging the National Library of Canada and the National Archives of Canada to create the new Library and Archives of Canada, the government is recognizing a situation that has been evolving over the last few years. Anyone familiar with these two important institutions knows that they have been working closely together for many years. Already the two share many administrative services such as finance, human resources, accommodations and security, as well as information and preservation services.

The union of library and archival sciences is a trend that has been observed at the university level. Increasingly, the courses being given involve both disciplines. Given this new reality, it is, perhaps, not surprising that the National Library and the National Archives were the ones who originally proposed this course of action that we are now pursuing.

The mandate for this new agency will be established on the foundation of the respective mandates of the National Library and the National Archives of Canada. Indeed, Library and Archives Canada will continue to pursue all the activities now conducted separately by the two institutions. It will collect Canada's documentary heritage by purchase, by agreement with other levels of government, legal deposit, collections of master copies of recordings and the transfer of Government of Canada records. It will continue to provide coordination of federal libraries and facilitate information management by government institutions.

Debate suspended.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** I am sorry to interrupt the Honourable Senator Carstairs, but, it being 3 o'clock, pursuant to the order adopted by the Senate on October 29, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Kinsella to Bill C-25.

The bell to call in the senators will be sounded for 30 minutes. The vote will take place at 3:30 p.m.

Call in the senators.

• (1530)

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING— MOTION IN AMENDMENT NEGATIVED

On the Order:

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

On the motion in amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the Bill be not now read a third time but that it be amended

(a) in clause 2

(i) on page 8, by replacing lines 27 to 32 with the following:

“include, among other things, harassment in the workplace.”, and

(ii) on page 99, by adding after line 8, the following:

#### “PART 2.1

#### PROTECTION OF WHISTLEBLOWERS

##### Definitions

**238.1** The following definitions apply in this Part.

“Commissioner” means the commissioner of the Public Service Commission who has been designated as Public Interest Commissioner under section 238.3.

“employee” has the same meaning as in Part 2.

“law in force in Canada” means a provision of an Act of Parliament or of the legislature of a province or an instrument issued under the authority of such an Act that is in force at the relevant time.

“minister” means a member of the Queen's Privy Council for Canada who holds office as a minister of the Crown.

“wrongful act or omission” means an act or omission that is:

(a) an offence against a law in force in Canada;

(b) likely to cause a significant waste of public money;

(c) likely to endanger public health or safety or the environment;

(d) a significant breach of an established public policy or of a directive in the written record of the public service; or

(e) one of gross mismanagement or an abuse of authority.

#### *Purpose*

#### Purpose

**238.2** The purpose of this Part is

(a) to provide for the education of persons working in the public service on ethical practices in the workplace and the promotion of the observance of these practices;

(b) to protect the public interest by providing a means for employees of the public service to make allegations, in confidence, of wrongful acts or omissions in the workplace, to an independent Commissioner who will investigate them and seek to have the situation dealt with, and who will report to Parliament in respect of problems that are confirmed but have not been dealt with; and

(c) to protect employees of the public service from retaliation for having made or for proposing to make, in good faith and on the basis of reasonable belief, allegations of wrongdoing in the workplace.

#### *Public Interest Commissioner*

#### Designation

**238.3(1)** The Governor in Council shall designate one of the commissioners of the Public Service Commission to serve as Public Interest Commissioner.

## Part of role of Commission

(2) The role of Public Interest Commissioner is a part of the function of the Public Service Commission.

## Powers

(3) The Commissioner may exercise the powers of office of a commissioner of the Public Service Commission for the purposes of this Part.

## Information made public

**238.4** (1) Subject to section 238.9, the Commissioner may make public any information that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, it is in the public interest to do so.

## Disclosure of necessary information

(2) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that, in the Commissioner's opinion, is necessary to

(a) conduct an investigation under this Part; or

(b) establish the grounds for findings or recommendations contained in any report made under this Part.

## Disclosure in the course of proceedings

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information necessary to assist

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

## Disclosure of offence

(4) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law in force in Canada that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, there is evidence of an offence.

## Not competent witness

**238.5** The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of the Commissioner's duties or powers under this Part in any proceeding other than

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

## Protection of Commissioner

**238.6** (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of the Commissioner's duties or powers under this Part.

## Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any record or thing produced in good faith and on the basis of reasonable belief in the course of an investigation carried out by or on behalf of the Commissioner under this Part is privileged; and

(b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

*Education*

## Dissemination

**238.7** The Commissioner shall promote ethical practices in the public service and a positive environment for giving notice of wrongdoing, by disseminating knowledge of this Part and information about its purposes and processes and by such other means as seem fit to the Commissioner.

*Notice of Wrongful Act or Omission*

## Notice by employee

**238.8** (1) An employee who has reasonable grounds to believe that another person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission

(a) may file with the Commissioner a written notice of allegation; and

(b) may request that their identity be kept confidential with respect to the notice.

## Form and content

(2) A notice under subsection (1) shall identify

(a) the employee making the allegation, and be signed by that person;

(b) the person against whom the allegation is being made; and

(c) the grounds on which the employee believes that the act or omission is wrongful and has been or will be committed, giving the particulars that are known to the employee and the reasons and the grounds on which the employee believes the particulars to be true.

## No breach of oath

(3) A notice by an employee to the Commissioner under subsection (1), given in good faith and on the basis of reasonable belief, is not a breach of any oath of office or loyalty or secrecy taken by the employee and, subject to subsection (4), is not a breach of duty.

## Solicitor-client privilege

(4) No employee, in giving notice under subsection (1), may violate any law in force in Canada or rule of law protecting privileged communications as between solicitor and client, unless the employee has reasonable grounds to believe there is a significant threat to public health or safety.

## Waiver

(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

## Rejected notice

(6) Where the Commissioner is not able or willing to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject the notice and take no further action on it, but shall keep it confidential.

## Confidentiality

**238.9** Subject to subsection 238.11(5) and any other obligation of the Commissioner under this Part or any law in force in Canada, the Commissioner shall keep confidential the identity of an employee who has filed a notice with the Commissioner under subsection 238.8(1) and to whom the Commissioner has given an assurance that, subject to this Part, their identity will be kept confidential.

## Initial review

**238.10** On receiving a notice under subsection 238.8(1), the Commissioner shall review it, may ask the employee for further information and may make such further inquiries as, in the opinion of the Commissioner, may be necessary.

## Rejected notices

**238.11** (1) The Commissioner shall reject and take no further action on a notice given under subsection 238.8(1), if the Commissioner makes a preliminary determination that the notice

(a) is trivial, frivolous or vexatious;

(b) fails to allege or give adequate particulars of a wrongful act or omission;

(c) breaches subsection 238.8(4); or

(d) was not given in good faith or on the basis of reasonable belief.

## False statements

(2) The Commissioner may determine that a notice that contains a statement that the employee knew to be false or misleading at the time it was made was not given in good faith.

## Mistaken facts

(3) The Commissioner shall not determine that a notice was not given in good faith for the sole reason that it contains mistaken facts unless the Commissioner has grounds to believe that there was adequate opportunity for the employee to discover the mistake.

## Report

(4) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

## Report to official and minister

(5) Where the Commissioner determines under subsection (1) that a notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief, the Commissioner may advise

(a) the person against whom the allegation was made, and

(b) the minister responsible for the employee who gave the notice of the matters alleged and the identity of the employee.

## Valid notice

**238.12** (1) The Commissioner shall accept a notice given under subsection 238.8(1) where the Commissioner determines that the notice

(a) is not trivial, frivolous or vexatious;

(b) alleges and gives adequate particulars of a wrongful act or omission;

(c) does not breach subsection 238.8(4); and

(d) was given in good faith and on the basis of reasonable belief.

## Report to employee

(2) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

*Investigation and Report*

## Investigation

**238.13** (1) The Commissioner shall investigate a notice accepted under section 238.12, and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

## Report not required

(2) The Commissioner is not required to prepare a report if satisfied that

(a) the employee ought to first exhaust other procedures available to the employee;

(b) the matter could more appropriately be dealt with, initially or completely, by means of a procedure provided for under a law in force in Canada other than this Part; or

(c) the length of time that has elapsed between the time the wrongful act or omission that is the subject-matter of the notice occurred and the date when the notice was filed is such that a report would not serve a useful purpose.

## Report to employee

(3) Where the Commissioner has made a determination under subsection (2), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

## Confidential information

(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Part.

## Report to minister

(5) The Commissioner shall provide the minister responsible for the employee against whom an allegation has been made, on a timely basis and in no case later than one year after the Commissioner receives the notice, with a copy of the report made under subsection (1).

## Minister's response

**238.14** (1) A minister who receives a report under subsection 238.13(5) shall consider the matter and respond to the Commissioner.

## Content of response

(2) The response of a minister under subsection (1) shall specify the action the minister has taken or proposes to take to deal with the Commissioner's report, or that the minister proposes to take no action.

## Further responses

(3) A minister who, for the purposes of this section, specifies action proposed to be taken shall give such further responses as are requested by the Commissioner until such time as the minister advises that the matter has been dealt with.

## Emergency public report

**238.15** (1) The Commissioner may require the President of the Treasury Board to cause an emergency report prepared by the Commissioner to be laid before both Houses of Parliament on the next day that the House sits if, in the Commissioner's opinion, it is in the public interest to do so.

## Content of report

(2) A report prepared by the Commissioner for the purposes of subsection (1) shall describe the substance of a report made to a minister under subsection 238.13(5) and the minister's response or lack thereof under section 238.14.

## Annual report

**238.16** (1) The Public Service Commission shall include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* a statement of activity under this Act prepared by the Commissioner that includes

- (a) a description of the Commissioner's activities under section 238.7;
- (b) the number of notices received pursuant to section 238.8;
- (c) the number of notices rejected pursuant to sections 238.8 and 238.11
- (d) the number of notices accepted pursuant to section 238.12;
- (e) the number of accepted notices that are still under investigation pursuant to subsection 238.13(1);
- (f) the number of accepted notices that were reported to ministers pursuant to subsection 238.13(5);
- (g) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has been taken;

(h) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has not been taken;

(i) an abstract of the substance of all reports to ministers pursuant to subsection 238.13(5) and the responses of ministers pursuant to section 238.14; and

(j) where the Commissioner is of the opinion that the public interest would be best served, the substance of an individual report made to a minister pursuant to subsection 238.13(5) and the response or lack thereof of a minister pursuant to section 238.14.

## Annual report

(2) The Public Service Commission may include in the annual report to Parliament made pursuant to section 23 of the Public Service Employment Act an analysis of the administration and operation of this Part and any recommendations with respect to it.

*Prohibitions*

## False information

**238.17** (1) No person shall give false information to the Commissioner or to any person acting on behalf of or under the direction of the Commissioner while the Commissioner or person is engaged in the performance or exercise of the Commissioner's duties or powers under this Part.

## Bad faith

(2) No employee shall give a notice under subsection 238.8(1) in bad faith.

## No disciplinary action

**238.18** (1) No person shall take disciplinary action against an employee because

- (a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed or stated an intention to disclose to the Commissioner that a person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission;
- (b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention to refuse to commit an act or omission the employee believes would be a wrongful act or omission under this Part;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to comply with this Part; or

(d) the person believes that the employee will do anything referred to in paragraph (a), (b) or (c).

#### Definition

(2) In this section, “disciplinary action” means any action that adversely affects the employee or any term or condition of the employee’s employment or adversely affects the employee’s opportunity for future employment within or outside the public service, and includes:

- (a) harassment;
- (b) financial penalty;
- (c) affecting seniority;
- (d) suspension or dismissal;
- (e) denial of meaningful work or demotion;
- (f) denial of a benefit of employment;
- (g) refusing to give a reference; or
- (h) any other action that is disadvantageous to the employee.

#### Rebuttable presumption

(3) A person who takes disciplinary action against an employee within two years after the employee gives a notice to the Commissioner under subsection 238.8(1) shall be presumed, in the absence of a preponderance of evidence to the contrary, to have taken the disciplinary action against the employee contrary to subsection (1).

#### Disclosure prohibited

**238.19** (1) Except as authorized by this Part or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 238.8(1) and has requested confidentiality under that subsection, or any other information the disclosure of which reveals the employee’s identity, which may include the existence or nature of a notice, without the employee’s consent.

#### Exception

(2) Subsection (1) does not apply where the notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief.

#### *Enforcement*

##### Offences and punishment

**238.20** A person who contravenes subsection 238.8(4), section 238.17, or subsection 238.18(1) or 238.19(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

#### *Employee Recourse*

##### Recourse available

**238.21** (1) An employee against whom disciplinary action is taken contrary to section 238.18 is entitled to use every recourse available to the employee under the law, including grievance proceedings provided for under an Act of Parliament or otherwise.

##### Recourse not lost

(2) An employee may seek recourse as described in subsection (1) whether or not proceedings based upon the same allegations of fact are or may be brought under section 238.20.

##### Benefit of presumption

(3) In any proceedings of a recourse referred to in subsection (1), the employee is entitled to the benefit of the presumption established in subsection 238.18(3).

#### Transitional

(4) Where grievance proceedings are current or pending on the coming into force of this Part, the proceedings shall be dealt with and disposed of as if this Part had not been enacted.”; and

(b) in clause 8 on page 108,

(i) by striking out lines 13 to 20, and

(ii) by relettering paragraphs 11.1(1)(i) and 11.1(1)(j) as paragraphs 11.1(1)(h) and 11.1(1)(i) and any cross references thereto accordingly; and

(c) in clause 88 on page 193, by adding after line 17, the following:

**“88.1 Schedule II to the Act is amended by adding the following in alphabetical order:**

Public Service Labour Relations Act  
section 238.9, subsection 238.13(4), section 238.19

Loi sur les relations de travail dans la fonction publique  
article 238.9, paragraphe 238.13(4), article 238.19.”.

Motion in amendment negated on the following division:

YEAS  
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Beaudoin	LeBreton
Cochrane	Lynch-Staunton
Comeau	Oliver
Di Nino	Prud'homme
Doody	Robertson
Gustafson	Spivak
Johnson	Tkachuk—17
Keon	

NAYS  
THE HONOURABLE SENATORS

Adams	Jaffer
Bacon	Joyal
Biron	Kroft
Bryden	Lapointe
Callbeck	Lavigne
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Maheu
Christensen	Mahovlich
Cook	Massicotte
Cools	Merchant
Corbin	Milne
Cordy	Moore
Day	Morin
De Bané	Pearson
Downe	Pépin
Fairbairn	Phalen
Finnerty	Plamondon
Fitzpatrick	Poy
Fraser	Ringuette
Furey	Robichaud
Gauthier	Rompkey
Grafstein	Smith
Graham	Sparrow
Harb	Stollery
Hervieux-Payette	Trenholme Counsell—53
Hubley	

ABSENCES  
THE HONOURABLE SENATORS

Nil

**LIBRARY AND ARCHIVES OF CANADA BILL**

SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I was addressing Bill C-36, to establish the Library and Archives of Canada and to amend the Copyright Act and to amend certain acts in consequence. I was talking about the merger of the library and the archives and I was describing some of the features of this new merger. I will continue.

At the same time, the new institution will also have a strengthened mandate to make known and more accessible our documentary heritage to all Canadians. In order to carry out this broader mandate, the new institution will be able to call upon the resources and all the expertise of the two original entities.

Just imagine the possibilities, honourable senators. Picture the horizons that will soon open up before us. Already we have some sense of the tremendous potential of Library and Archives of Canada. The two original bodies are already working closely together to serve Canadians through the new Canadian Genealogy Centre.

Working in partnership with the Department of Canadian Heritage and others, the Library and Archives of Canada launched this new Web site on genealogy and the history of families. As senators no doubt know, the Canadian Genealogy Centre is a one-stop shop providing physical and electronic access to genealogical resources in Canada. The centre offers genealogical content, services, advice, research tools and opportunities to work on-line on joint projects, all in both official languages.

Honourable senators, this initiative is an excellent example of how new technology can be used in innovative ways to increase people's access to information. That is a very promising development, and it is becoming increasingly clear that Canadians need easier access to knowledge and information, especially with regard to our heritage and culture. To a large extent, this is due to the evolution of information technology, which has whetted the appetite of Canadians for rapid access to information in all of its forms.

At the same time, technological advances also have a tremendous potential in areas such as storage, data management and documentary research, making it possible to create a cogent single point of access to our documentary heritage.

Thanks to the magic of the Internet, it is also easier to make our documentary heritage known to interested users in Canada and abroad.

On this issue, I should like to quote Mr. Roch Carrier, the National Librarian, who made this national statement about the National Library's Music Department:

In the past, we used to get 300 researchers coming in every year. Now that we are on-line, every month we receive 100,000 visitors.

Technological progress is also reshaping the field of document preservation. More accurate temperature control, a better understanding of the nature of materials, more sensitive monitors and other developments are helping to ensure that the most precious artifacts of our heritage are protected for future generations.

As a result, our documentary heritage is given a new lease on life and all Canadians gained improved access to a vast treasure trove of valuable information about themselves and their country. That is why this bill also includes provisions that will ensure that the new agency has the modern tools required to meet the information needs of Canadians in the 21st century. For example, the institution's traditional activities will be supplemented and reinforced by a new collection method; that is, by sampling the Internet and capturing a periodic reflection of the Canadian reality in this virtual world.

• (1540)

The goal is to capture a sample of our times and of this new medium, which is both ever-present and ethereal, where the look and feel of the most cutting-edge Web sites change as quickly as the technology allows. It is absolutely critical that Library and Archives Canada be allowed to take these snapshots of Internet content, which is accessible to the public without restriction, if it is to succeed in preserving for all future generations a record of the life we have led, the communications tools we have used and the technologies we have succeeded in creating.

While I am on the subject of this new institution having the right to copy samples from the Internet, it is important to stress that this new power will only apply to Internet content that is widely accessible to the general public and without any restriction. As well, it should be mentioned that the process of fixing on a permanent medium this ephemeral material for the purpose of preservation requires an exception under the Copyright Act. Therefore, Bill C-36 proposes the necessary consequential amendments to that act.

A further proposed amendment to the Copyright Act occurs as a result of the last major review of the Copyright Act, which took place in 1997. At that time, the government put an end to perpetual protection of unpublished work and brought unpublished works into line with the general term of protection for copyright in Canada. Since then, unpublished works have been given a protection of 50 years after the death of the author.

At the same time that this amendment was made, a five-year transitional period was introduced as a matter of courtesy to the estates of authors so their work would not fall into the public domain immediately. These provisions came into force on December 31, 1998. Unpublished works of authors who died more than 50 years before that date, i.e., before 1948, would therefore fall into the public domain on January 1, 2004. However, while the descendants of certain writers expressed concern about protecting their copyright, there were also a number of people, including academics, historians, archivists, genealogists and others, who look forward to seeing unpublished works enter the public domain.

The provisions found in this bill, which would extend the period of protection for an additional three years only, will allow sufficient time for this issue to receive proper attention. As a result, the legislation that is the focus of today's debate would extend protection for three years for the unpublished works of authors who died after December 31, 1929 and prior to January 1, 1949.

This bill will also make changes that benefit historians, archivists, genealogists and other stakeholders. Bill C-36 will do this by amending section 30.21 of the Copyright Act to remove the conditions that archival institutions must meet in order to make single copies of unpublished works. Such copies are used for the purposes of research and private study.

Section 30.21 currently states that a copy of an unpublished work deposited before October 1, 1997 can only be made if the archive is unable to locate a copyright owner. It also states that records must be kept of all copies made under this section. Honourable senators, as you can well imagine, this sort of record keeping adds a considerable burden to our archival facilities and the provisions contained in the Library and Archives of Canada Act would repeal this condition.

Canada's documentary heritage belongs to all of us, and it must be more accessible for all Canadians. These amendments are yet another example of the fact that Library and Archives Canada will have the mandate, the powers and the tools necessary to attain its goals.

Honourable senators, for all these reasons I am proud to add my voice to those of my colleagues who are supporting Bill C-38. Thanks to this initiative, our country will be able to give itself a new cultural agency, one that will reflect, interpret, celebrate and stimulate our national identity. I hope that all honourable senators will be able to support this worthwhile measure.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a question for the minister. The most contentious part of this bill is a proposed amendment to the Copyright Act. I hope that the minister will not allow this chamber to follow the sorry example of the House of Commons. The original amendments to the Copyright Act were discussed in committee and one in particular did not satisfy very many people. Suddenly, two days ago, in the House of Commons, according to their Hansard of October 28, the government House leader announced that there had been an agreement between the House leaders, read out a new amendment to the Copyright Act, which is significantly different from the one that was in the bill tabled at the time, and simply asked for unanimous consent. The acting Speaker asked if there was unanimous consent to adopt the motion and honourable members agreed. There was no discussion and no warning at all that these major changes in the Copyright Act, which were already the subject of diverse opinion, would be tabled and adopted within the time it took to read them.

I would hope that the minister will not force another bill upon us, and that she will allow all the time needed to discuss this aspect of the bill with interested witnesses. Representations are already coming in. I am sure that the leader has received letters, and so forth. There is a great deal of unhappiness out there at how the House treated this bill. I plead with her that we not repeat that sorry example here.

**Senator Carstairs:** Honourable senators, as the honourable senator knows, a number of strange things happened to this bill on the way to its completion. There had apparently been an agreement similar to the one that we finally have in this bill. Somehow, that agreement was lost, and a new motion came in with a new clause, which caused some controversy.

My understanding is that there were meetings of the representatives of the political parties in the other place before this new amendment was tabled in the House, and there was unanimous consent from all parties to delete one part and add a new part. That is all the more reason for us to send this bill to committee and study it.

Only yesterday, in a spirit of great enthusiasm for a bill, there was discussion that we would not even send it to committee. We made the decision, which I think was wise, that even if it only went for one day, it should go to committee. That was the Westray bill, Bill C-45. I would certainly expect that we would send this bill to committee.

**Senator Lynch-Staunton:** I had forgotten about that first agreement — I think it was an agreement — that was changed without any consultation with some of those who were party to the agreement. I will repeat what happened in this case. House leaders, behind closed doors, agreed to substitute one amendment for another. None of the witnesses who had appeared before the committee were consulted. They found out about it only when they read the Hansard of the House the following day. That is deplorable, and I hope that the people involved are listening.

**Hon. Serge Joyal:** Honourable senators, I certainly concur in the objective of the bill, the merger of those two national institutions. My concern arises from the fact that two major institutions that are linked to the new body, the National Portrait Gallery and the new historical centre in Ottawa, are not mentioned in the bill. I have looked at the definitions of the bill. I have looked at clause 6 of the bill, which provides for an advisory council, but nowhere in the bill is there any mention of those two institutions that will become the window of the archives and library for Canadians, one of the key centres for access to information in relation to their history. Those institutions have been announced and I understand that a commission has been given to a Canadian firm of architects to prepare the plans for the portrait gallery.

I am happy to report to honourable senators that the Honourable Senator Grafstein and myself were at the origin of that project, and it was reported in the paper at that time.

[ Senator Lynch-Staunton ]

• (1550)

Could the Leader of the Government explain why those other two national institutions that will be linked to the National Archives of Canada and the National Library of Canada are not even mentioned in the bill?

**Senator Carstairs:** Honourable senators, I do not know why they are not mentioned. I can only assume that, for the purpose of legislation, it was not necessary for them to be mentioned. However, that is clearly an area that should be debated and discussed at the committee stage.

**Senator Joyal:** The honourable government leader will understand that the National Gallery of Canada, the National War Museum of Canada, the Canadian Museum of Civilization, the Canadian Museum of Aviation, the Canadian Museum of Nature, all find their existence recognized in the statute because they are considered permanent. They are part of the overall heritage of Canada, and they are part of the overall facilities that the Government of Canada wants to provide to Canadians.

Again, I do not assume that the government leader has the responsibility for that decision, but I am very surprised that those two very important institutions, essentially linked again to the National Archives of Canada and the National Library of Canada, do not find recognition in that bill. In fact, I was expecting to find them in this bill, considering that the government has already announced a budget, which is already in implementation and so forth, so it is not only in the air as a dream but it is a reality. I could not be more supportive of that reality, but I am surprised not to find anything in the bill that mentions them, even in the definition of government institutions. They are not even there.

**Senator Carstairs:** As I indicated in my earlier answer, honourable senators, that is clearly an area of study for the committee.

On motion of Senator Kinsella, debate adjourned.

[Translation]

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, if we were to return to the order proposed in the Order Paper, we would be at Item No. 2. We have had the vote on the motion to amend and I think it would be appropriate to deal with this item.

[English]

## POINT OF ORDER

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I rise on a point of order. Honourable senators, this is a very serious matter. It speaks to the integrity not only of the chamber and the decisions of this chamber, but it also speaks to the integrity of our committee system.

In making this point of order I will be referring to rules 1, 48, 58, 85 and 95 of the *Rules of the Senate of Canada*. I shall also be drawing the attention of honourable senators and His Honour to rule 1(2) that reminds us that the *Rules of the Senate of Canada* shall in all cases be interpreted as having priority over any practice or custom, which speaks to the fact that practice and custom is a critically important part of our process and that, unless there is an explicit rule to trump a practice, the custom must be respected.

In accordance with rule 85(1), the Senate Committee on Selection is struck at the commencement of each session. The duty of that Committee of Selection is to nominate the senators to serve on the several select committees in accordance with rule 85(1)(b). The Committee of Selection did so with reference to the order of this house that was adopted and that has created all of the standing committees of the Senate that are currently in act.

However, due to the recommendation of the report of the Selection Committee, which contains the names of the senators whom the Selection Committee nominates, it is understood that the duty of those senators — if their nomination is confirmed by the Senate, and that confirmation is an order of the house — in turn, is to serve on the select committees to which the Senate has ordered that they be the senators sitting on a given committees.

The Committee of Selection itself does not present a report in any haphazard way. It goes through a series of steps and, indeed, there are discussions between the various parties in the Senate. There are long discussions among the members of the various parties in the house in order to determine the areas of interest of the given senators who eventually will be nominated, but also the areas of special expertise that the given senators bring to the work of a committee.

A very important factor that guides the Committee of Selection is the schedule of meeting times for the various committees. In order to avoid potential conflicts in timetabling, the Committee of Selection takes into consideration the schedule of meetings of the various committees. One of the more difficult aspects of the work of the Committee of Selection is to choose from among very capable senators those who would be the ideal choices on more than one of a number of committees that meet at the same time.

For example, the Committee of Selection would avoid putting a senator on both the Standing Senate Committee on Social Affairs, Science and Technology and the Standing Senate Committee on Legal and Constitutional Affairs, because, in part, both of these committees have their regular time slots on Wednesday afternoons and Thursday mornings. Committees are expected to meet during the specified time slots allocated. To do otherwise may well provide insuperable obstacles or scheduling conflicts for the members of the committee and obviate the opportunity for the given senator to do his or her duty, which is what flows from the order of the house that has confirmed the senator sitting on a given committee.

This is the problem a number of senators on this side found they were facing this morning. The chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, together with the other Liberal members of the steering committee, and over the vigorous objections of the deputy chair of that committee, convened a meeting of the committee this morning outside of its normal scheduled times and outside of the direct indication by the whip of the official opposition that that time, which is not the time slot for that committee, would be particularly harmful to the rights and privileges of our senators who have a right to be sitting on the committee to which an order has been adopted. In this case, this morning some senators were sitting on the Standing Senate Committee on Legal and Constitutional Affairs, while others were on the Standing Committee on Internal Economy, Budgets and Administration, and they were sitting at their regularly scheduled times. Therefore, they were unable to attend an illegally scheduled meeting of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. It is disappointing that a committee with a name like “Rules, Procedures and the Rights of Parliament” would take an action that has so fundamentally affected the rights of a senator. The usual procedure has been the custom in this place long before I arrived here 13 years ago. That custom and practice is respected, I suggest, in every legislative assembly that honourable senators would be able to survey.

• (1600)

That meeting of the Rules Committee was held this morning at 10 a.m. The committee also heard from witnesses on a bill, the order of reference for which was given to that committee to examine that given piece of legislation. As honourable senators know, that piece of legislation is Bill C-34 and, once again, ironically, it is called the ethics bill.

Senator Oliver, our lead critic on the bill, is also the Chairman of the Standing Senate Committee on Agriculture and Forestry. What was his committee doing? The Honourable Senator Oliver was busy chairing another Senate standing committee. He had a duty to be at the Agriculture Committee meeting. That committee was hearing testimony on the subject of bovine spongiform encephalopathy, or BSE.

Because of this prior important commitment — more than commitment, even duty — Senator Oliver was not able to attend the surprise, illegal meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament to hear a very important witness testify on Bill C-34.

Senator Beaudoin is the Deputy Chair of the Standing Senate Committee on Legal and Constitutional Affairs. His obligation is to be at the meeting of the Legal Committee which meets, according to the agreed-upon time schedule for committees, at 10 o'clock on Thursday mornings. Senator Andreychuk is also a member of that committee.

How do these three senators feel? These are three of our best senators; three of our most assiduous senators; three senators who bring, from the viewpoint of the analysis of the opposition, a special reflection which is appropriate in our parliamentary chamber, where the government sits on one side and the opposition sits on the other.

Those senators had duties to attend those meetings. They were called upon to attend, by an order of the house that elected them to serve on various committees, the Rules Committee.

Senator Stratton and Senator Robertson both sit on the Standing Committee on Internal Economy, Budgets and Administration. What is its regular scheduled time for meeting? Its regular slot is Thursday morning. That committee convened in its regular time slot to deal with budgetary matters requiring consideration.

Honourable senators, that is the entire complement of the opposition members presently sitting on the Standing Committee on Rules, Procedures and the Rights of Parliament. All five of our members had prior duties pursuant to an order of this house to attend meetings of standing committees of this chamber. All of those meetings, which they had a duty to attend, were properly convened in their allotted time slots.

However, and again ironically, the Standing Committee on Rules, Procedures and the Rights of Parliament, notwithstanding its title, intentionally met outside its allotted time slot. That extraordinary scheduling was done without the agreement of the committee as a whole. Indeed, the transcripts of the committee do not even show that the matter was discussed in the committee. I am certain that members of the Standing Committee on Rules, Procedures and the Rights of Parliament on the government side faced similar conflicts. For example, I hope we will have read into the record the report that is coming from the Legal Affairs Committee today. Senator Joyal, who is a member of the Legal Affairs Committee, made an intervention at that committee pointing out the impossible situation he was placed in because of the illegally convened Rules Committee meeting. He wanted to follow the very important legislation in that committee, but he also wanted to participate in a critically important piece of legislation affecting the mining families of Nova Scotia.

The difficulty is that the situation compels senators to choose which obligation they will fulfil. I refer His Honour to rule 85(3), which states:

Subject to subsection (4) below, the Senators nominated under this rule shall, when their appointments are confirmed by the Senate, serve for the duration of the session for which they are appointed.

Subsection (4) allows for changes to be made. The purpose is to allow for situations where senators are not available due to illness or when they are away.

We will leave for another time a practice of the leadership on either side which I find unparliamentary: attempting to substitute senators who have been elected upon the nomination of the Selection Committee to serve on a given committee and removing others — against their will, some might suggest. The leadership on either side has the authority to make substitutions if they do not like the way a given senator is going to reflect and then vote on a matter before that committee. That kind of dictatorship is not what parliamentary tradition is all about.

Honourable senators, rules 85(3) and 85(4) allow for changes. His Honour will want to look at those. It is so important to underscore the duty that is met so honourably by all honourable senators to attend meetings of the committees on which they serve. The work of our committees is one of the hallmarks of this important chamber in our great country. We all recognize the importance of our committee work, as do Canadians. Our senators respond to that duty with a positive attitude and not reluctantly.

All in this house recognize that there will be occasions when other business compels senators to be absent. I believe rule 85(4) provides for those situations. However, when a committee takes steps that literally make it physically impossible for a senator to fulfil that duty, we have a serious problem that undermines the whole chamber.

• (1610)

Honourable senators, the Standing Committee on Rules, Procedures and the Rights of Parliament chose to continue its hearings of witnesses in the absence of members of the opposition party. I wish to place on the record the fact that this was not a boycott. It could not be a boycott, because we had senators who had to be in attendance at the Legal Committee and the other committees that I mentioned.

It was the desire of all of our members on the committee to attend the meetings on the subject of Bill C-34. That is on the record. Both Senator Andreychuk and Senator Beaudoin were present at the beginning of the meeting to express their concern about the scheduling problem. However, they were denied the opportunity to be present and question the witnesses due to the irregular timing of the meeting — deliberately held at a time when the chair knew that it would generate scheduling conflicts for members of the committee and without their concurrence.

Honourable senators, it is frequently suggested that Senate committees are masters of their own destinies and that this is not a matter to be raised in the chamber. I raise it because an order of this house was made in response to the report that this house received and adopted — and, I might say, it was unanimously adopted — from the Selection Committee. It is a matter of direct concern for the chamber as a whole.

It seems to me that, where a committee wishes to sit outside the times allocated to it, the members of the committee ought, as a bare minimum, to first be consulted. Furthermore, honourable senators, I would draw your attention to the rule which applies when the Senate stands adjourned. Rule 95(1) provides that:

95(1) A select committee may adjourn from time to time and, by order of the Senate, from place to place.

This rule, you will note, does not contain any limitation on those times. Our committees may be masters of their own destinies, but they are creatures of the Senate itself. Since the adjournment rule for committees is silent as to the timing of the next meeting, we should look to the process in place for the chamber itself for guidance. Our rules provide clearly that the rules in committee will be guided by the rules of the chamber.

Rule 58(1)(h) states that one day's notice is required for a motion. It states:

58(1)(h) for an adjournment of the Senate, except the ordinary daily adjournment as provided in rule 6(1) or (2) or under rules 15 and 48(1);

Notice, of course, must be given in the chamber. The chamber, therefore, once again, has a direct interest in and direct oversight of the comportment of our committees. By analogy, notice of a meeting of a committee to sit outside its assigned time slot would be, clearly, required. It follows, *mutatis mutandis*, that notice would have to be given during the course of a committee meeting.

Nothing of this nature was done. It has been a most unfortunate attempt to breach the responsibilities, indeed, the rights and, I would suggest, the privileges not only of the honourable senators who sit on the respective committees involved, but also of an order of this house.

Honourable senators, I think that, as a remedy, this house should not only take this under consideration, but also find a way to correct the wrong that has been perpetrated so that the witness, who appeared at an illegally constituted meeting, will be recalled, and that all members of the committee will be given the opportunity to hear from that witness and, more important, to adduce evidence by questioning that witness.

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

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, with the greatest respect to the senators opposite and, in particular, Senator Kinsella, there is no point of order.

First, if there were a legitimate point of order, it should have been raised at the first possible opportunity. That would have been immediately as we went to Orders of the Day this afternoon. It was not.

**Senator Oliver:** Senator Kinsella was not here.

**Senator Kinsella:** Who cares?

**Senator Robichaud:** We care. I care.

**Senator Kinsella:** They did not care about our members not being in committee.

**Senator Lynch-Staunton:** Your fault.

**Senator Carstairs:** We have heard a great deal about rule 85(1). Honourable senators, that rule does apply to the Selection Committee. The Committee of Selection selected 15 names of senators to be members of the Rules Committee. Those names have changed a number of times. As late as October 17, less than eight days ago, neither Senator Oliver nor Senator Beaudoin was listed as a member of the Rules Committee. Senator Andreychuk was listed as such, but the other two senators were not. If they maintain — and I assume they are correct — that they are now members of that committee, then that change was made as recently as six or seven days ago.

**Senator Lynch-Staunton:** What is the point?

**Senator Carstairs:** As to the process that was followed in committee, it appears that the committee spent 50 minutes today debating procedure before it heard from the witness, who was there waiting to be heard. It would seem to me that the honourable senators who are now indicating that they had to move on to another meeting because their meeting started at 10:45 a.m. could have easily heard from that witness from 10:00 a.m. to 10:45 a.m. and then moved on to debating their procedure. However, they chose not to do so.

**Senator Lynch-Staunton:** One meeting started at 8:30 a.m.

**Senator Carstairs:** Senator Oliver, it was indicated, was busy at the Agriculture Committee, but my information — and I stand to be corrected — is that the Agriculture Committee ended at 9:55 a.m., five minutes before the Rules Committee began.

Some senators said that they were required to attend the Energy Committee, and it is my understanding that that committee meeting ended at 9:50 a.m. I also understand that Internal Economy ended at 11:00 a.m. The committee that heard this particular witness and that debated the various views began at 10 a.m. and went on to just before the Senate commenced.

There are no rules of this chamber that dictate the times when a meeting shall be held, with one exception: We do not permit, unlike they do in the other place, committees to sit while the Senate is sitting, unless there is unanimous consent.

We had a situation today where, yes, a great number of committees were sitting. Honourable senators, that is common in the Senate. It is common on Tuesday. It is common on Wednesday. It is common on Thursday. It is common because the Senate frequently is not here as a body on Mondays and Fridays, and so the prevailing desire of most senators is not to have committees sit on Mondays and Fridays. Frankly, we changed the rules a couple of years ago to add a few committees, on the provision that they would sit on Mondays. That certainly is the situation with the new Official Languages Committee, the Standing Senate Committee on National Security and Defence and the Standing Senate Committee on Human Rights. Members of those committees come in on Mondays. It is certainly not uncommon now for many senators to be gathered here on Mondays to attend to their committee duties.

It was certainly clear to my caucus members that we were in a period of time where being here five days a week was going to be common. Therefore, because we could not sit at the same time as the committees would sit, there will be an adjournment motion today to not have the Senate sit tomorrow but to indeed have this committee sit so that they can continue their very thoughtful and considered deliberation.

• (1620)

The other side, of course, would indicate that they have small numbers and they have to be accommodated at every possible opportunity. We have, on this side, done our very best to do that so that they be accommodated. Whenever it is possible, we try not to add to the conflicts that already exist with many members on many committees.

While we try to accommodate that when we first start with a meeting of the Committee of Selection, and we try on both sides to have as few conflicts as possible, changes are made on a very rapid basis, some days before the ink is dry on the report of the Committee of Selection. Those changes take place because that is the nature of the parliamentary system, as the honourable senator said. We have senators who have other commitments. We have senators who are travelling on one Senate committee when their other committee is meeting in Ottawa. Clearly, on those occasions, we are forced to change the membership of that committee.

I would argue, honourable senators, that there is no point of order here. The other side clearly does not like what happened. I can respect that they do not like it but, frankly, that does not give them a point of order.

**Hon. John Lynch-Staunton (Leader of the Opposition):** If the point of order is to be determined strictly on the narrowness of the rules or the interpretation of the rules alone, perhaps Senator Carstairs has an argument. I would hope, though, that when it comes to the event which the point of order is all about, some customs and traditions of this place will also be taken into account.

We have never asked for special accommodations. We have asked for basic consideration. We have never complained in this

chamber about the time slots that presently exist. We have always respected them, and tried to have our members at the committees knowing ahead of time when those committees are meeting. Senator Oliver was put on the Rules Committee to replace Senator Murray. He is an ideal choice for all of us because he is co-author of the Milliken-Oliver report. In any event, he has as much knowledge of the issue of ethics as anyone in this room, so it is only natural that he serve on that committee

Therefore, I find it insulting for him to be told, "Okay, when you are through with the Agriculture Committee, wander in to the Rules Committee. They may already have heard one witness or two, but that is no matter. Your obligation is to go there." Senator Oliver can reply for himself, but if I were he, I would say, "Look, why did you not ask me a few days ago if I could attend a committee meeting at a time outside its ordinary time slot?"

That is basically what we are saying here. None of the committee members, except for Senator Andreychuk, as a member of the steering committee, was consulted — not consulted about the Thursday meeting, and not consulted about the Friday meeting. If we had been consulted the week before on what the plan of the government was through the chair of the committee regarding scheduling of hearings on this bill, we would have said either no or yes at the time, but at least we could not be faulted for not having been alerted to the new schedule of sittings.

What we resent, and perhaps it is allowed by the rules, is that a committee chair, with the support of one member of the steering committee, can unilaterally disrupt the schedule of the committee and have it sit at a time of his or her choosing. Maybe that is done and can be done, but surely basic courtesy and our custom — and, it is to be hoped, respect for each other — should not allow that to be done.

**Hon. Lorna Milne:** Your Honour, Senator Kinsella is quite right when he says that committees in this place have always been considered the masters of their own fate. During the organizational meeting of the Rules Committee, the committee itself gave the steering committee specific authority to schedule meetings of the committee. I quote from the minutes of our proceedings:

That the subcommittee be empowered to make decisions on behalf of the committee with respect to its agenda, to invite witnesses and schedule hearings;

There is no mention in the minutes of the organizational meeting that restricts the times of those meetings to the spots in the schedule.

Senator Kinsella is also correct in that I did not, at the end of our regular meeting on Wednesday, announce when our next meeting would be. A senator at that point was still speaking in committee, and 1:30 arrived and I had to bring the gavel down to end the meeting. Without this type of notification, committees are always considered to be adjourned to the call of the chair.

A meeting of the steering committee, I point out, was held on Tuesday of this week, and it was agreed by a majority vote — not a unanimous vote, but a majority vote — to call the meeting this morning at 10 a.m., and I believe I properly called that meeting. We had a quorum in the committee when we heard the witnesses this morning. No opposition members are required to be there for a quorum within that committee. A quorum consists of four people, and rule 86(1)(f) states clearly that our quorum is four. I believe that the committee was properly constituted this morning, and there is no point of order.

**Senator Lynch-Staunton:** It is all there. So much for custom, so much for tradition, so much for courtesy, and so much for democracy. Keep on sitting without the opposition. Ram the bill through and wonder why and who prompted you to do it.

**Hon. Anne C. Cools:** Honourable senators, I was listening carefully as Senator Kinsella first raised this point of order. It took him a few minutes to develop it and a few minutes for him to explain to the chamber exactly where he was going with this point of order.

I would submit that Senator Kinsella has not only made a valid point of order, but he has also made an important point of order. I listened very carefully, and there are a few issues and questions that I intend to answer, but his point of order is very important.

Before I go into the substance of what I want to say, I want to answer two points, one made by Senator Milne and the second one made by Senator Carstairs. The first point Senator Carstairs made to which I wish to respond is she said that points of order must be raised at the earliest opportunity. That is not the case. Points of order can be raised whenever the raiser sees it as relevant or important. The terminology “earliest opportunity” comes from the sections of the rules respecting the raising of questions of privilege under the *prima facie* rules with reference to the Speaker, so there is no time constraint on points of order. That is the first point.

The second point that I would like to make is on something that Senator Milne just raised. She talked about the powers or the rights of the subcommittee on agenda to schedule hearings and so on. I would make the point that any powers that the subcommittee has to schedule hearings cannot possibly intrude or entrench on any orders of the Senate. The powers that are given to the subcommittee on agenda, or whatever it is called, expect that those steering committees, which is what we call them in the lexicon, will conform to all the other rules of the system. They have absolutely no power to override any orders of the Senate.

That brings me now to the substance of my intervention. Honourable senators, this whole business of membership changes on committees and the arbitrary setting of committee meetings needs some very serious examination — for another day; not today. For the moment, I wish to explore the point that Senator

Kinsella raised, which is with respect to rule 85(4), which has to do with changes in membership on committees. That rule would lead one to expect that any change in membership would be made with the agreement of that member. It is not a tool of coercion.

• (1630)

I would also state, honourable senators, that by order of this Senate, members of committees are appointed for the duration of sessions. There is no question about that. Some may not choose to abide by that order, but, make no mistake, that is an order of the Senate.

Returning to my central point, we must understand that the Senate, like any other chamber or any other House of Parliament, can only operate through its orders and its resolutions. They are the only two ways it has of exercising its will.

The rules in respect of the Committee of Selection exist to allow the Senate to make decisions about the composition of its committees. Honourable senators, once those decisions are made and voted on in this chamber, they become an order of the Senate. I would submit to honourable senators here that all members of the Senate are expected to conform to and to obey those orders.

I would also submit that no chairman of any committee, or any steering committee of any committee, has any power to overrule that particular order. Any committee chairman who believes thus is sadly mistaken and seriously erring in his or her ways. Our system is supposed to condemn arbitrariness, not to support arbitrariness.

Therefore, honourable senators, my understanding has always been that, if a committee wanted to meet outside of its allotted time, it could only do so by a unanimous decision of the committee members. If that were not the case, you would have a situation where a decision would be made, some members of the committee would not agree to it, and so they could just go out and set up another committee meeting and overturn that decision.

The rules are intended to prevent and to protect against arbitrariness. I submit to you that no committee has the power just to ignore an order of the Senate and to step outside of the framework and the system and go off and set up a committee meeting that many members cannot attend. To do so would be a very serious breach, because what the committee is doing, in point of fact, is asking or ordering honourable senators to disobey the larger order of the Senate. That is improper.

Honourable senators, this has been done many times. I do not believe there is any trickery involved in this instance, but I can tell you that I have been around here for a while I have seen lots of tricks, some not so desirable.

Honourable senators, no committee chair can ask any senator to disobey an order of the chamber and attend a committee meeting.

I would remind you of the attendance requirements. I just happen to have a copy of one of our writs of summons which is read when new senators are called which, in part, states:

AND WE do command you that all difficulties and excuses whatsoever laying aside, you be and appear, for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

No chair of a committee can overcome that order.

Honourable senators, the first remedy for what happened this morning is for this chamber to declare that that meeting was improperly constituted, and because it was improperly constituted, the proceedings are de facto void. The next remedy would be for the committee to convene in its proper allotted time a meeting of the senators who are the members of the committee to decide how to move forward from there, and, finally, for the committee in question to admit that it had no authority to conduct itself in the way it did.

Many honourable senators may think that these are just minor, minute, or arcane, trivial points. I can tell you that this goes to the heart of what constitutes a proceeding in Parliament, and what constitutes a proper process in Parliament.

Thank you, honourable senators.

**Hon. Serge Joyal:** Honourable senators, I will be brief. I happen to be a permanent member of the Standing Committee on Rules, Procedures and the Rights of Parliament, and I take that job very seriously. In fact, I have attended each and every meeting in the last five years from beginning to end. I have questioned the witnesses and debated with my colleagues around the table in each and every committee.

I also happen to be a permanent member of the Standing Senate Committee on Legal and Constitutional Affairs and have been for the last five years. I have attended each and every meeting of that committee and questioned witnesses and debated with my colleagues.

I have tried, under my commission and oath of office, to give my advice and my consent to legislation. Sometimes my colleagues share my views, and I am happy with the result. Sometimes they do not, and I expect that, at a further time, I will have an opportunity to continue the debate with them. I have always tried to be very respectful of the status of each and every senator.

This morning, I found myself in the untenable position of attending a sitting of the Standing Committee on Rules, Procedures and the Rights of Parliament on an issue in which I have been taking a great interest personally and, at the same time,

of being called to the Standing Senate Committee on Legal and Constitutional Affairs, not to study an issue but to vote, which is the utmost decision each one of us can take. I was caught in that difficult and, as I say, untenable situation.

To me, honourable senators, it is unethical. It is unethical as a parliamentarian to be shifted from one room to the other. I do not want to be considered a pawn on a chess board. When I arrive at a committee meeting, I want to have the time to read a bill, consult, bring some documents and contribute. I do not come empty handed. I come with some documents, because I expect my colleagues will expect to have a full debate.

I would not be on my feet now had the meeting been called for 9 a.m. to adjourn at 10:45 a.m. I would have attended the meeting of the Rules Committee and then, at 10:45 a.m., I would have moved to the Legal and Constitutional Affairs Committee.

However, I found myself in the untenable position whereby, between the two witnesses that the Rules Committee was hearing this morning, I rushed to the Legal and Constitutional Affairs Committee to raise a point of order and to explain to my colleagues why I was not there — because I was not sick in the hospital or at home, and I was not travelling. In fact, honourable senators, I never travel when this house is sitting and not with a committee, for obvious reasons, because my utmost duty is to express my views on bills and on issues. I do travel a great deal, but not when the Senate is sitting.

Honourable senators, I feel most uncomfortable to be in this constitutional position. I chose to sit on two committees that have different time slots.

• (1640)

The system of time slots is a good one; it allows us to sit on different days so that we are never caught in that conflict. I even sit on the Human Rights Committee on Mondays, a committee chaired by the Honourable Senator Maheu, because the government asked me to contribute on the important issue of the status of Aboriginal women who happen to get divorced on reserve. I said that I would commit to attend the committee. I do not say “yes” and not go; I say “yes” and I go. They do not have to call me to know if I will be there or not there. That is the way I interpret my professional responsibility in this house.

Today, unfortunately, for the first time in the last five years, I found myself in that position. I was never consulted as to whether or not I could attend the meeting. There was no courtesy. Courtesy is not a rule. Ethical behaviour is not a rule. Ethical behaviour is what is proper.

[Translation]

Much is being made of the word “ethics.”

[English]

In this chamber we want to be more ethical. The first ethic is to attend meetings. There is no need to have an ethics counsellor or officer if we are not here, if we are travelling, if we are somewhere else. Why have a rule on conflict of interest. If we are not here to exercise our duty, it is meaningless.

The first ethic is to be here and to attend the committee you have been ordered to attend. That is the ethic. Should we have an ethics officer for attendance? Maybe. Our major problem arose because some senators did not attend. That is where these problems started. That is where our reputation started to fade; not because of conflict of interest, not because we receive gifts, not because we travel in planes. Our reputations started to be tarnished because we were not here. Why? It is not ethical not to be here. It is not ethical not to be at the committee you are summoned by the standing order to attend.

That is what I think about ethics. The rest has to do with the words "code of conduct." I am in favour of a code of conduct. Believe me, I will write a code with my colleagues on the Standing Committee on Rules, Procedures and the Rights of Parliament. Rely on me to write the rules and draft a code of conduct. I will write a code of conduct, and you may do what you want with it after that. That is not the problem.

The problems start with ethics. Honourable senators know that ethics is not the rule of law; ethics is what you in your conscience think is right and wrong. You do not need to legislate that; we will never be able to legislate ethics.

There must be ethics here. Ethics is the way each one of us sees our respective duty. If we do not recognize that, we can have all the codes of conduct in the world. We can have 10 commissioners of ethics and we will still be unethical. We might abide by the conflict of interest, abide by the rules on gifts and the other rules, but we will miss the most essential element of the respect that we want to get from the public. That is what this is all about: the respect of the public, the integrity and the reputation of this place.

This morning, at the Standing Senate Committee on Legal and Constitutional Affairs, the representatives of the friends and families of the Westray miners were in attendance. I wonder what they thought when they saw a senator going in and out of the room and another one being late. It is as if you are in court. Three judges are in front of you, and one will be there for 10 minutes and then leave, and he will be replaced by another judge for 15 minutes and then leave and come back. That is not the way we do serious work.

**The Hon. the Speaker:** Senator Joyal, I am sorry to interrupt. I wish to remind honourable senators that this is not a time for debate, but rather a time to focus on the point of order raised by Senator Kinsella.

**Senator Joyal:** I will conclude, honourable senators.

If we are to review our rules and our conduct, we should review the rules of the standing order to move senators around. That is much more damaging to this institution than anything else we can do in this chamber.

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

**Senator Milne:** Honourable senators, it has been common practice in this place since time immemorial to replace senators on committees when other senators are not able to be there. If we should not be allowed to do this, why have we been doing it for years and years? Very few committees in this place end up with the membership with which they began the session. I cannot think of one.

**Senator Lynch-Staunton:** Yes, there is — the Selection Committee.

**Senator Milne:** I apologize. The honourable senator is quite right.

I ask any senator here to cite where an order of the Senate states that certain committees sit at specific times. I simply do not believe that it can be done.

I acted properly. I resent any implications whatsoever that I acted improperly.

**Senator Cools:** Yes, you did!

**Senator Milne:** I certainly did not!

**Senator Cools:** You did!

**Senator Milne:** I did not!

Point of order! Point of privilege, Your Honour!

**The Hon. the Speaker:** I remind all senators again that this is not a time for debate, but rather a time to focus on the specifics of Senator Kinsella's point of order.

**Senator Milne:** I once again repeat that no orders of this place have been broken and I acted properly.

**Hon. A. Raynell Andreychuk:** Honourable senators, I will not unduly delay this point of order. However, our rules, behaviour and conduct must be taken into the greater picture of how we conduct ourselves in what we call a democracy. We pride ourselves on travelling to other countries and speaking about how they should act. That does not mean taking the Constitution or rules and saying that we have the right.

What is the object of being here and going to committees? Is it simply to ram bills through, or is it to take the time to study, to reflect, to debate with each other, to change each other's minds and to come to some consensus? Canada is a diverse society. Part of that diversity is the opposition. We must be given room to put our points of view. Citizens come to us from a slightly different point of view and say, "We have attempted to get to the government; we cannot. You, the opposition, have a particular role to play."

I do not think that we can take the rules in this chamber and say, "Well, it says from 2:00 to 5:00 or 9:00 to 10:00." I do not think that is the way we should do things.

I have heard comments that, "Well, the committee ended at a quarter to 10." I have gone to committees where I have telephoned the clerk. They are tired of hearing from my office about when committees will start or end. We are not that fine-tuned. We should not be. We sometimes take longer to debate points.

When a committee starts at 8:00, it may end at 9:00. The chairman cannot control that. It may end at noon. Senator Milne had the task of bringing down the gavel at 1:30 p.m. even though a senator was still speaking. That is all part of the debate and the thrust here.

The rules must be read in line with what is fair, just and appropriate. The rules are not there simply to be taken advantage of.

My concern is: Whose agenda are we moving to? Are we moving to the Senate's agenda or some other agenda? Time and time again, we are told about November 7. In 2003, in a modern democracy, we are still playing games about whether or not we are sitting?

We should be told there is a deadline of November 7, and then we will all readjust. I will cancel speeches. I will not vote in Saskatchewan in the provincial election if November 7 is the real date, but we do not know. What can we go by? The rules. We should abide by those rules. We should give the spirit to those rules that gives the greatest stretch to the opposition as well as the government.

• (1650)

**The Hon. the Speaker:** I will not recognize senators a second time, except for Senator Kinsella.

**Senator Cools:** You already did, Your Honour.

**The Hon. the Speaker:** I know I did. We have spent an hour on this point of order. I understand how important it is, but I will have to bring it to an end in order to serve the interests of this chamber in terms of the other business that it has to deal with.

[ Senator Andreychuk ]

**Hon. Jeremiah S. Grafstein:** I will be very brief, honourable senators. I did make an earlier intervention before this point of order was raised, but I take Senator Andreychuk's point and the new information that Senator Joyal put on the table, that is, that this meeting could have been arranged at nine o'clock to accommodate the opposition. I was very uncomfortable with the proposition that we could not arrange a time today that would accommodate members opposite because to sit with only one party represented on an issue that deals with the constitution of the house is difficult.

I believe there is an obligation on the part of the chairman of a committee who changes what we consider to be the conventional practices of meetings to explain why a change was made, and I have not yet heard that explanation.

I support the point of order and look for your elucidation, Your Honour.

**Senator Kinsella:** Honourable senators, I will conclude by expressing the view that in our debates here nothing is argued in an *ad hominem* way. I respect all honourable senators, and troll never for ill will anywhere. It is only the issue that we speak of.

I think His Honour would be doing a great service to the chamber if he would give some attention to the matter of practice, usage and custom. There is a whole section on it in *Erskine May Parliamentary Practice*, 22nd edition, although I will not read it. You will find it referred to in several sections throughout that volume.

I think the issue that we have apprehended here is anchored in the rules. Our own rules do recognize the importance of custom and usages, and clearly throughout the parliamentary literature you will find much. I was just glancing through the companion to the standing orders of the House of Lords, where there are references.

We cannot ignore customs, practices and traditions. Not everything is captured in the rules, but there is enough in the rules, I believe, in this issue to make the point.

With that, I hope that we have been helpful to Your Honour in looking at this matter.

**The Hon. the Speaker:** Thank you, honourable senators. I listened and made some notes. I intend to try to form a response, as you have requested of me, on whether there is a point of order. I will leave the Chair and ask the Speaker *pro tempore* to take the Chair. I hope to be back soon.

This matter does not interfere with any of the matters on our Order Paper and, accordingly, the business of the Senate can proceed while I am absent.

[Translation]

## CRIMINAL CODE

### BILL TO AMEND—FIRST READING

**The Hon. the Speaker *pro tempore*** informed the Senate that a message had been received from the House of Commons with Bill C-32, An Act to amend the Criminal Code and other Acts.

Bill read first time.

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

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

[English]

## PUBLIC SERVICE MODERNIZATION BILL

### THIRD READING—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, An Act 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.

**Hon. Donald H. Oliver:** Honourable senators, I am pleased to rise to join in the debate on this very important bill in relation to the reorganization of the Public Service of Canada.

It was on June 16 of this year that Senator Lowell Murray received a letter from Mary Gusella, the Chief Commissioner of the Canadian Human Rights Commission. In that, she drew his attention to the view of the commission regarding the potential impacts of certain provisions of Bill C-25 on the operations of the Canadian Human Rights Commission. She indicated that they were concerned that some provisions of the bill dealing with redress procedures will unduly impair the ability of the Canadian Human Rights Commission to carry out its statutory mandate.

It is important to note that this letter resulted in a legal opinion by Professor Ed Ratushny, a very well-known and highly respected lawyer in the Ottawa area. He conducted an independent legal analysis of the impact of the bill as it affected the operations of the Human Rights Commission. His report was circulated widely and was drawn to the attention of the Honourable Lucienne Robillard and her officials long before the matter ever came to this chamber.

When Bill C-25 was before the Standing Senate Committee on National Finance, I moved two amendments to introduce the possibility of the Human Rights Commission asserting its competence over certain complaints brought before the Public Service Labour Relations Board that involve human rights questions. These amendments came from an assessment of Professor Ed Ratushny of the operations of the Human Rights Commission under the proposed legislation. This assessment was commissioned, as I said, by the Canadian Human Rights Commission. His testimony before the committee raised several shortcomings in the bill with regard to the Human Rights Commission's powers of intervention in labour disputes. These are issues that must be taken seriously, as they will have grave consequences on the effectiveness and the efficiency of labour dispute settlements.

One of the most alarming points raised by Professor Ratushny's analysis was that the commission would be restricted to intervenor status in labour relations hearings dealing with human rights questions. Simply put, the arbitration process does not have the necessary expertise to deal with such cases, and the powers given to the commission are not enough for it to carry out its mandate in this circumstance.

The Human Rights Commission is to have standing in certain cases, so we must give the commission the power to assert priority jurisdiction over cases dealing with human rights infringements. That was, and still is, the goal of the amendments that I had moved. To do otherwise would be to render a disservice, not only to the Human Rights Commission by limiting its powers to act in the field of competence but also to the individuals who have been wronged.

I would like to quote from Professor Ratushny's letter to explain precisely what he found to be the evil that he sought to remedy. I quote from his formal legal opinion as follows:

The opportunity for the Commission to intervene is a recognition in Bill C-25 that there are shortcomings to the ability of labour arbitrators to deal adequately with human rights issues. These limitations are very real. At a fundamental level, arbitration is designed to deal with workplace and employment disputes and not to adjudicate quasi-constitutional human rights. Arbitration is designed to deal with issues specific to individual grievors and not to address broader systemic issues which affect society at large. Unlike the systems established by human rights legislation, arbitration is an adversary process between two parties, in which the public interest is not represented. Moreover, special concerns arise in relation to human rights issues where the interests of the Union and the individual employee diverge.

• (1700)

Finally, the absence of any requirement of human rights expertise on the part of arbitrators under the PSLRB and PSST is demonstrable in the provisions of Bill C-25. Section 18(1) requires adjudicators to have "knowledge of or experience in labour relations". In contrast, section 48.1(2) of the CHRA requires Tribunal members to have —

— and listen to this language —

— “experience, expertise and interest in and sensitivity to human rights.”

The provision in Bill C-25 authorizing intervention by the Commission in arbitration hearings is an awkward and ineffective attempt to respond to these concerns. It does not take into account each of these specific limitations and how they may be overcome.

Professor Ratushny brought another major problem to the attention of our committee. He indicated that under the principle of judicial bias the ability for the Human Rights Commission to hear a case, which had previously gone before the arbitration process, would be seriously hindered.

This well-established legal principle relies on either the appearance of a de facto bias, as in the case of an advocate for the Human Rights Commission that has intervened with regard to a case involving human rights both at the arbitration level and again at the Human Rights Tribunal, or it relies on the presence of an “institutional bias,” which represents the ability for the Human Rights Commission to be involved in a case at the labour relations level and then to hear the case again at the appeal level — the same case.

The end result of this bias will be that the judgment rendered by the tribunal would be subject to a right of appeal before the courts under the judicial review principle. As Professor Ratushny pointed out, speaking of the right of appeal to the Federal Court under the judicial review principle:

...such litigation will be disruptive of the grievance arbitration process and could put all the grievances involving human rights issues in limbo. Indeed, if C-25 is found to have the practical effect of denying complainants access to the protection of the Canadian Human Rights Act, this could constitute a contravention of Section 15 of the Charter. The result could be to strike down the offending provisions of Bill C-25.

That being said, I urge honourable senators to think long and hard about the possible long-term effects of leaving this section of Bill C-25 untouched. Professor Ratushny argued rather convincingly that the bill's provisions relating to human rights issues and the corresponding roles of the commission and the Human Rights Tribunal do not reflect an appreciation of the fundamental nature of human rights legislation in Canada; the principle being that just because one is trained as an arbitrator does not mean one has the sensitivities to be a human rights arbitrator.

The crux of the problem is that Bill C-25, as currently drafted, transfers human rights adjudication in relation to the public service to an arbitration process. This arbitration process does not have the necessary expertise or tools to rule on such significant areas of law. The end result of this transfer will be to burden the court system with serious administrative and constitutional challenges to the decisions of the arbitration panels and the Canadian Human Rights Tribunal.

Honourable senators, we have a tremendous responsibility here today. As it currently stands, Bill C-25 is laden with a serious flaw. This is a flaw that can be fixed now rather than a few years down the road as the result of a court decision. This amendment would replace the restriction placed on the Human Rights Commission to play the role of an intervener in relation to cases involving human rights issues with the ability to remove and rule on exceptional cases within its material competence and expertise. It is leaving to the Human Rights Commission those matters that it is qualified to deal with.

That being said, honourable senators, I wish to move an amendment to Bill C-25 to remove this serious flaw in the legislation.

#### MOTION IN AMENDMENT

**Hon. Donald H. Oliver:** Honourable senators, I move, seconded by Senator Robertson:

That Bill C-25 be not now read a third time but that it be amended

(a) in clause 2

(i) on page 88, by replacing lines 37 to 40 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”,

(ii) on page 91, by replacing lines 9 to 12 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”, and

(iii) on page 92, by replacing lines 26 to 29 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”; and

(b) in clause 12, on page 139, by replacing lines 1 to 4 with the following:

“(6) The Canadian Human Rights Commission may deal with an issue referred to in subsection (5), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the proceedings before the Tribunal shall be suspended on the request of the Canadian Human Rights Commission.

(6.1) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the proceedings before the Tribunal are suspended, the proceedings before the Tribunal shall be resumed.”.

Honourable senators, I commend those amendments to your attention.

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

• (1710)

**Hon. Joseph A. Day:** Honourable senators, first, I would like to thank Honourable Senator Oliver for his comments. Honourable senators will know that both of these issues — now becoming one issue in the form of an amendment — were dealt with as two separate amendments proposed at committee stage. We had the benefit of hearing from Professor Ratushny, a very well-respected professor of law. We also had the benefit of considering a recent decision of the Supreme Court of Canada. Professor Ratushny's comments, taken at face value, suggest that the expertise in the Human Rights Commission should win out over the procedure that is outlined in Bill C-25, under both the labour aspect — represented by the Public Service Labour Relations Act which is part of the bill — as well as the Public Service Employment Act, where individuals are involved. In each instance where there is a grievance to be addressed, the plan in Bill C-25 is to allow the grievance adjudicator to resolve the issue.

In each instance, in Bill C-25, the provision is to ensure that notice is given. If a grievor raises an issue of human rights, notice must be sent to the Canadian Human Rights Commission, and the commission has the opportunity to make submissions.

In the proposed amendment, my honourable colleague is suggesting that the individual's choice of raising this issue within the structure of Bill C-25 would be stopped. The grievor's choice to file a grievance within the grievance adjudication process under either one of the two acts — that is, the labour act or the individual act — within Bill C-25, as a labour issue, would be stopped for at least 30 days. The Human Rights Commission would have the right to decide whether to take possession of that issue.

Bill C-25 suggests that such matters be dealt with within the labour management and employment management structure that is provided. Professor Ratushny argued that the adjudicator within Bill C-25 would not have the expertise, and that there is lots of expertise within the Human Rights Commission. That is true; there is more expertise within the Human Rights Commission. However, the Human Rights Commission will get notice of any human rights issue and has the right to make submissions in the adjudication process within Bill C-25.

**Senator Oliver:** Only as an intervenor.

**Senator Day:** Honourable senators, the Supreme Court of Canada considered this issue of expertise. The Supreme Court of Canada ruled in a decision of the *Parry Sound District School Services Administration Board v. the Ontario Public Service Employees Union Local 324*. That decision was released on September 18, 2003.

The court stated:

...the Human Rights Commission has a greater expertise than grievance arbitrators in the resolution of human rights violations. In my view, any concerns in respect of this matter are outweighed by the significant benefits associated with the availability of an accessible and informal forum for the prompt resolution of allegations of human rights violations in the workplace...Moreover, expertise is not static, but, rather, is something that develops as a tribunal grapples with issues on a repeated basis.

The Supreme Court of Canada has spoken on this issue and has said that the approach proposed in this legislation is the right one: Deal with it within the structure of employment management. The expeditious manner in which matters can be dealt with there is the right way to address matters.

Therefore, honourable senators, I respectfully submit that we should not accept this amendment, and that we should follow the direction that Bill C-25 is taking and the decision that was made at the committee stage in rejecting the amendment.

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

**Senator Oliver:** Honourable senators, will the Honourable Senator Day accept a question?

**Senator Day:** I would be pleased to attempt to answer the honourable senator's question.

**Senator Oliver:** The honourable senator quoted from a recent case of the Supreme Court of Canada. The portion he quoted dealt with the definition of the word "expertise." As he knows from the evidence given by Professor Ratushny, the professor was referring to section 48 of the Canadian Human Rights Act that certainly uses the word "expertise" but it goes a lot farther and uses language that the Supreme Court did not consider.

I will read for the honourable senator section 48(1)(2) of the act:

...experience, expertise and interest in, and sensitivity to, human rights.

That is the expertise that Professor Ratushny and the Canadian Human Rights Commission feel is lacking in an ordinary labour arbitrator. They have not had that special training that is required. The Supreme Court did not deal with that extra requirement. What can the honourable senator say about that?

**Senator Day:** I thank the honourable senator for his question. There is no question that there is expertise in the Canadian Human Rights Commission. That is why Bill C-25 provides that any time an issue of human rights is raised, the Human Rights Commission must be given notice, and the Human Rights Commission may then make submissions to the adjudication process with respect to that expertise that they have.

**Senator Oliver:** They only have intervener status. They cannot, in fact, use their training and their sensitivities to deal with the matter as a case. Intervener status is not adequate to be able to fully discharge the duties and obligations they have under the Canadian Human Rights Act. That is the failure.

**Senator Day:** This is where my friends and I diverge. First we were talking about their expertise and now he wants them to become a party. Their expertise can be taken advantage of as experts making submissions in the adjudication process.

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

**Some Hon. Senators:** Question!

**The Hon. the Speaker *pro tempore*:** It was moved by the Honourable Senator Oliver, seconded by the Honourable Senator Robertson, that Bill C-25 be not now read third time but —

**Senator Carstairs:** Dispense!

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

*And two senators having risen:*

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

**Hon. Terry Stratton:** Honourable senators, I would ask that the vote be deferred until 5:30 p.m. tomorrow.

**Hon. David P. Smith:** I understood there was an agreement for Monday at 4:00 p.m., with the bell ringing at 3:30.

**Senator Stratton:** Fine.

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators, that the vote will be held next Monday at 4:00 p.m., and that the bell will ring at 3:30 p.m.?

**Hon. Senators:** Agreed.

• (1720)

## ASSISTED HUMAN REPRODUCTION BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Yves Morin** moved second reading of Bill C-13, respecting assisted human reproduction.

He said: Honourable senators, I rise today to speak on Bill C-13, the Assisted Human Reproduction Act. This bill has been a long time coming. Louise Brown, the first so-called "test tube" baby, was born through *in vitro* fertilization 25 years ago in Britain. Canada's Royal Commission on New Reproductive Technologies issued its report more than 10 years ago. Bill C-47, the first attempt to legislate these technologies, died on the Order Paper more than seven years ago.

All told, we have engaged in more than 12 years of discussion, consultation and debate in this country. Now it is time for the Canadian Parliament to legislate decisively on this crucial issue. Bill C-13 provides us with a means to do so.

This is an important bill, one that addresses complex ethical, medical and scientific issues and addresses them in a comprehensive manner. It is for this reason that suggestions to split this bill along one line or another would undermine its objectives.

[Translation]

Honourable senators, this bill also addresses a serious legal vacuum. At present, there is no legal framework in Canada regulating assisted human reproduction. Such a framework is all the more necessary since certain groups like the Raelians, whose headquarters are in Quebec, have stated through Ms. Boisselier that they are currently producing human clones.

[English]

Bill C-13 does a number of important things. First, it sets out guiding principles, enshrined in the legislation, to provide a foundation for decisions in this contentious area. These principles make paramount the health and well-being of children born through assisted human reproduction techniques and of women, who are most affected by these technologies; protect dignity and rights, including the right to free and informed consent; underscore the unacceptability of trade in reproductive capacities; and safeguard the integrity of the human genome.

Second, Bill C-13 prohibits inappropriate uses of reproductive technologies, uses that are universally abhorrent. The bill forbids cloning of a human being by any process and for any purpose; the creation of animal human hybrids and chimeras; implantation of a human embryo into an animal; sex selection, except for prevention of sex-linked disease; and altering the human genome in a way that these alterations can be passed to succeeding generations.

These prohibitions are widely supported by all Canadians, including scientists and researchers. In fact, I know of no serious scientist in this country who would attempt such egregious procedures.

[Translation]

Honourable senators, the bill also deals with the difficult issue of the commercial exploitation of assisted human reproduction. As the Royal Commission's report recommended, Bill C-13 prohibits any payment to donors of reproductive materials and to surrogate mothers for anything above and beyond reasonable expenses.

Other than prohibitions, this bill is intended first and foremost to protect the vulnerable clients needing assisted reproductive services. These techniques, which I believe are one of the great

accomplishments of modern medicine, are an answer to the desire of most women to have a child.

[English]

Bill C-13 also protects the children born as a result of the use of reproductive technologies. In the decade since the Royal Commission first reported, we have sequenced the human genome and learned just how important a role genetics plays in preventing, diagnosing and treating disease. Bill C-13 ensures that children born through the use of donated gametes will have full access to a detailed medical history of their biological parents.

The bill will ensure safe and beneficial access to technology for the thousands of women who consult infertility clinics in Canada every year. The Society of Obstetricians and Gynaecologists of Canada has recently finalized an accreditation process for these clinics. Nonetheless, the society fully supports the creation, through this bill, of the proposed Assisted Human Reproduction Agency that will monitor and enforce the act.

In particular, this agency will license fertility clinics, ensure quality control and guarantee the safety of cells and tissues for assisted human reproduction. It will ensure the privacy and informed consent of persons using assisted human conception and ensure that they are actively involved in the decision-making process. Canadian women deserve no less.

Honourable senators, reproductive technologies are becoming a very important issue in the lives of Canadians. One in eight couples today are challenged by infertility, and the numbers are rising. These techniques are often invasive and complex and women must be protected when they submit to these difficult procedures.

Even more important, we must ensure that those children born from these treatments will not be exposed to risks as the result of a failure to consider the ethical as well as the technical aspects of these technologies. This bill ensures that women and children are well protected in these circumstances. However, developments in this area are marching rapidly. Research advances are raising new hopes for those who have not been helped to date but also raising new concerns, concerns that affect all Canadians.

Bill C-13 responds to these concerns. The agency that the bill creates not only regulates treatment but will also regulate research involving human embryos. This research is essential for the safety of cells and tissues used in assisted human reproduction and for the quality of fertilization procedures. Research on human embryos has now been regularly performed in Canadian fertility clinics for more than 20 years. Now, under Bill C-13, these research sites would be licensed and the research would be carefully monitored to ensure that high standards of safety and ethics are maintained.

The regulatory provisions of Bill C-13 will ensure that these donated embryos are used to advance our knowledge and increase the chances of a successful pregnancy and birth for women undergoing *in vitro* fertilization. This goal, namely, the birth of healthy babies to families who would otherwise be childless, is at the heart of Bill C-13, and I regret that this has been overshadowed by the attention paid to stem cell research. This imbalance is not altogether surprising, though, given the tremendous potential of stem cells. Bill C-13 makes the same regulatory provisions for stem cell research as for embryo research.

Embryonic stem cells are cells that are harvested from the embryo at a very early stage when it contains only some 150 identical cells called blastocysts. These cells are unique in that they can transform in any type of specialized tissue in the body. This unique property means that one day embryonic stem cells may cause a child with muscular dystrophy to walk; a child with haemophilia to play without bleeding to death; a child with diabetes to lead a normal, uncomplicated life. Indeed, embryonic stem cells hold tremendous potential to help any number of chronic conditions — a potential that is recognized by researchers throughout the country.

• (1730)

By no means does Bill C-13 facilitate and promote embryo research. Instead, it would establish clear boundaries, where none currently exist, as to what constitutes acceptable research and under what condition research involving the *in vitro* human embryo could be undertaken.

[Translation]

In Quebec, for example, the Fonds de recherche en santé du Québec recently adopted a position in favour of allowing regulated research on embryonic stem cells, a position which supports this bill.

Once Bill C-13 is in force, it will only be possible for researchers to use stem cells from excess embryos, embryos that were not used during assisted fertilization, or embryos that are to be destroyed. Nor will it be possible to create embryos for any reasons other than human reproduction; this is a fundamental principle of this bill.

Honourable senators, these are the main features of this bill, which is an excellent one in my opinion. It is the result of more than ten years of debate and consultations at all levels, beginning with the monumental royal commission of 1989 and its 293 recommendations. Everyone's voice was heard, often more than once, and people often spoke passionately.

[English]

Indeed, the fruit of that national discussion can be seen here in Bill C-13. Women's organizations, voluntary organizations representing hundreds of thousands of Canadians, all national

medical organizations and virtually every Canadian scientist involved in this type of work have all expressed their approval of Bill C-13.

Four days ago, a group of 65 Canadian health care ethics and health law experts, in fact, nearly all health ethicists and lawyers in the country, published an open letter supporting Bill C-13 and urging parliamentarians and especially senators "to resist the pressures that are being brought to bear against the Bill. The safety and well being of Canadian women and children depends upon them passing the legislation now."

At the international level, at a major conference held recently in Berlin, Bill C-13 was noted as model legislation that would draw clear lines on acceptable practices like human cloning and the creation of so-called designer babies, while protecting and promoting the health of women and children.

Honourable senators, we know that in the rapidly changing world of reproductive technologies, we cannot rest on our laurels, assuming that our work is done. This is why Bill C-13 mandates a full review of the legislation by both Houses of Parliament three years after its passage. We know, then, that if Bill C-13 is passed, women and children will be protected. Research will be regulated, and regular review to adapt to changing circumstances will be mandated.

If it does not pass, we can be sure that the policy vacuum that has characterized the Canadian situation for years will continue, leaving the door wide open to groups such as the Raelians, intent on cloning human beings and engaging in other practices abhorrent to Canadians.

If Bill C-13 is not passed, there will be no regulatory oversight to protect children born through assisted human reproduction techniques. There will be no legislation to protect thousands of women who consult the infertility clinics in Canada.

Honourable senators, the Senate must show that it can act decisively for the common good and respond unequivocally to the wish of the great majority of Canadians by voting in favour of Bill C-13 and against a legal void. Thank you.

**Hon. Anne C. Cools:** Honourable senators, I have a question. I thank Senator Morin for his speech, and I am pleased to see that Senator Keon is standing ready to adjourn the debate, because I think, quite frankly, this chamber is blessed by having such able doctors, such able physician specialists, in our midst.

Can Senator Morin answer one question? I will understand if he cannot.

In the other place, this bill encountered considerable objections from many members of the Liberal caucus. Could Senator Morin summarize for us some of those objections. As a doctor, I am sure he has greater insight into some of these problems.

[ Senator Morin ]

**Senator Morin:** Honourable senators, I am in a very difficult position. I believe very strongly in the virtues of this bill. I have reviewed the various objections that were submitted and I feel that they are without foundation. I believe that some of them had a pseudo-scientific basis that could not bear scrutiny; others were based on non-scientific grounds, and I respect those.

I would repeat: What is the alternative if we do not vote for this bill? We will have a legal void. Children and women will not be protected. Believe me, this is a very difficult field. Many fertility clinics are not within hospitals. They are free-standing. It is extremely important for these fertility clinics to be well regulated.

Women and couples can frequently be at a vulnerable stage in their lives. It is especially important that we realize that there are serious risks for children who are born from these technologies. If this bill is not passed, these children and women will be without protection.

**Senator Cools:** I thank Senator Morin for his response. Could he give us more insight about some of the risks? He told us that these children are at risk or in danger. Could he expand on that?

I am sure that Senator Morin recognizes that this chamber has had very little debate on or insight into some of these questions, even though the bill has been around for a long time. Very little is on our record. Some of us are looking to Senator Morin for some elucidation.

**Senator Morin:** Honourable senators, if these techniques are properly applied, and if they are well regulated, there is no risk. The risk is when certain techniques lead to a large number of multiple births. We know that multiple births are associated with prematurity and that in certain cases prematurity can lead to other difficulties. This is why it is important for these technologies to be well regulated.

I fully realize that the Canadian Society of Obstetricians and Gynaecologists has recently set up a voluntary regulatory process of various clinics. In addition, it is important to have an agency that has powers to licence these clinics, to inspect them, to receive information on the conduct of the procedures that are done there, and to be sure that these women and children are protected. The message I should like to convey is that, if the procedures are carried out as they should be, there is no risk to children, but if they are not, there is risk. It is critical to pass this legislation as quickly as possible to ensure that children and women are protected.

• (1740)

**Hon. Wilbert J. Keon:** First, I would like to compliment Senator Morin for a very enlightened presentation of the positive aspects of this enormously complex bill. I would also like to move adjournment of debate.

On motion of Senator Keon, debate adjourned.

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING

**Hon. Wilfred P. Moore** moved the third reading of Bill C-45, to amend the Criminal Code (criminal liability of organizations).

He said: Honourable senators, in moving third reading of Bill C-45, I wish to thank those senators on both sides of the chamber who supported its expeditious processing. I want to thank Senator Forrestall for his moving and supportive speech at second reading. I want to thank Senator Furey and the members of the Standing Senate Committee on Legal and Constitutional Affairs for their diligent work on this bill.

I commend Vernon Theriault, a former Westray miner who received the Medal of Bravery for his work as part of the rescue effort, and his colleagues, Ms. Del Paré and Peter Boyle, for their dogged pursuit of this legislation.

Had Bill C-45 been in place in 1992, it would not have prevented the Westray disaster, but it would have ensured that those in management would have been brought to bar to answer the many questions of the families and friends of the departed 26 miners. That is all that the people of Pictou County ever wanted.

Honourable senators, this bill is for those 26 miners, 11 of whom are entombed forever in that mine.

**Hon. A. Raynell Andreychuk:** Honourable senators, I want to echo the words of Senator Moore on the importance of Bill C-45. I cannot speak as eloquently about the Westray disaster as those who were closer in Nova Scotia, but I think it is one of those singular moments in Canadian history that most Canadians remember. We were all horrified as the inquiry into the incident unfolded, and we look forward to a day when corporations and individuals will not be allowed to risk the lives and the welfare of other human beings. That is simply not tolerable in this day and age.

I believe enough has been said about Bill C-45 and its progression. I simply want to underscore a number of points.

First, anything as important as this bill from the government should come to the Senate in such a way that we can pay justice to it. The way we can pay justice to those who died would be to respect democracy and ensure that this bill receives the utmost attention and due diligence that this Senate can afford it.

Second, my hope would have been to deal with this bill in a routine manner so that we could have studied it in the fullness of time and given it the respect that it deserves.

Third, no matter how long we work at a bill, its importance comes down to the wording of the bill. I believe this bill contains one of the finest intentions that I have seen come through Parliament; nonetheless, that intention will not come to fruition if the words within the bill do not fully represent that intention.

We know that drafting is a very difficult matter. Words sometimes may be intended by the drafters to mean one thing, but they may be interpreted by the courts to mean another. What I would not want to see is this bill experience difficulty in the future whether from the unintended consequences of the wording or that some of its clauses cannot be implemented for various reasons. Therefore, it was extremely important that the Standing Senate Committee on Legal and Constitutional Affairs have at least some time to study the bill. I want to bring some of those signals to the chamber here and to alert the minister and ministry officials that due diligence be taken from this point on in the administration of this bill and in the conduct of the administration of justice.

I pointed out one section where “senior officer” is defined as one of the persons who will speak for the organization and bind the organization, should they find themselves subject to this bill. There is a word that I have yet to see in legislation when we say a “senior” officer means “a representative who plays an important role” in the establishment of an organization’s policy. The words “a representative who plays an important role” do not necessarily mean a “senior” officer. It simply means someone a representative of the company who plays an important role yet to be defined by the courts.

I sincerely hope that there will be guidelines and examples from the ministry to assist companies that want to abide by the law, on the one hand, and to give the signal to everyone else what is meant by these terms.

The government took the opportunity with this bill not to just address the issues of the Westray mine but also to codify in the statute the duty of care that must be taken by all of us.

This section does not deal with corporations and institutions as does the rest of the bill. It will bind all of us. To this point, the duty of persons has been the common law. Here, we are codifying all of the common law, bringing it into this section. I would like to read it because it is paragraph 3 of the bill. It will be section 217.1 of the Criminal Code:

Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

Honourable senators, it is not a difficulty that this proposed section of the Criminal Code is being added to codify this duty that we all will have, but it is being put in the middle of a bill that

deals with the Westray mine disaster. My concern is that we are codifying common law, and it is the ministry’s best attempt at defining all of the common law within this particular section.

• (1750)

Under questioning, the minister’s representative very correctly pointed out that it is the ministry’s best attempt at a codification, and that the courts may see it otherwise.

Honourable senators, in the committee, Senator Moore pointed out that there have been some attempts by the department to signal this change for all of us. I had hoped that it would be in our comments. There had been agreement that the attachment that came to you would not only contain the comments about various separate senators — Senator Beaudoin, Senator Joyal and myself, and our difficulty with the proceedings, but that we had hoped there would be a section here — and I thought there had been some agreement, but I think, in our haste, it has been omitted — that the ministry undertake reasonable steps to bring to the attention of the public this proposed new section, by which we will all be bound, and in particular to bring it to the attention of the police, prosecutors and the entire legal community who will have to deal with any new sections that have to do with duty of care.

I am hopeful — although we have not had sufficient time to study it — that it is a full compilation of the common law. I do not believe that senators had taken the time to do so, at least none at the committee expressed themselves that they had. I certainly had not. Consequently, I believe it is an extremely important section. Codification of the common law can be argued to be favourable or not.

The point is, if the government decided to do it and it binds us beyond corporations, it would have been admirable to have had it brought in a separate amendment or a separate statute. However, inside the statute as it is now, the public has the right to know, beyond the legal notifications that are normally done.

My final point is that, in drafting, we were told that the ministry is now looking to new ways of using the English and French language. I was working from the English version, and hopefully the French version is as adequate. They want to use common words and not Latin words. In the proposed new section 22.2, which deals with *mens rea*, they have not used *mens rea*; they have used the term in English, “mental state.”

While the term “mental state” has been used in judgments and by the courts and the legal community, it has not been used in the Criminal Code. The ministry rightly pointed out that while this term has been used elsewhere, this would be the first time that the term “mental state” will be used in the Criminal Code. The official indicated that this was done to cover all kinds of terms such as “knowingly,” “wilfully,” and “with intent.”

Since our country was founded, we have had many occasions to discuss *mens rea*. However, to turn *mens rea*, the compilation of all the terms that mean *mens rea*, into the term “mental state,” one can only hope that the courts will interpret that in the same way as the department and the ministry intended. This is a new term, the first time that it will be in the Criminal Code. It would have been worthy of much greater discussion.

I reference these two important proposed new sections because it is just for this that I say to the people of Westray: You deserve the best piece of legislation, one that can be fully supported by all, not only in the intent, but also where we have a reasonable assurance that the words within the act speak to what we intend.

I would not want to be back at some later time trying to perfect the bill. There has been too much delay and too much agony. This bill stands for what the Westray people want, to ensure that others are not put in the position that they were, whether they are the victims or those who are left to mourn for them.

The best legacy the Senate could offer is to pass this bill. The emergency here is the emotional need to resolve the Westray situation.

In addition, I would like an undertaking that we not pass bills of this importance “crunched” — if I can accept the gossip — at the end, in a rush, first, second and third reading, where we cannot do justice to something so important. However, when we weighed the importance of this issue, I had to yield.

I hope that the words in this act reflect the intent. I have had to raise and flag the issues that concerned me, so that the members here will reflect and ensure that those words intend what we believe them to do. We need to also ensure that the public is aware of the full contents of this bill and the two additions to the Criminal Code that will not only affect those touched by Westray but will also affect all of us. The duty of care is such an important concept in our law, and one that must be fully understood.

I hope that at some stage in the Standing Senate Committee on Legal and Constitutional Affairs we will take some time to reflect and relook at this issue, including the issue of *mens rea*, which now appears to be stated as “mental state.”

I wish to thank all honourable senators who participated. I certainly wish to express my appreciation to all of those whom Senator Moore has pointed out.

Westray representatives contacted me some time ago. However, I think they knew that those closest to and in Nova Scotia live with the memory every day. I laud them for their perseverance in ensuring that we build communities with greater care for those who work for us.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wish to participate in this debate, but I am also mindful of the clock. Perhaps I could ask my colleague the

Deputy Leader of the Government whether or not he could share with us what he would see happening at six o'clock. Does he have a view that he can share with us at this point?

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, sometimes I hesitate. My intention as the deputy leader was to stand everything after government business. There was a senator who was saying that if we did that, then he would agree that he would not be called on to speak. I would not want to go past six o'clock and not see the clock and then continue, because that would not respect my undertaking to that certain senator. If we were to continue past six o'clock, I think honourable senators would want us to do so in order to terminate this item.

**Senator Kinsella:** On behalf of the opposition, we express our agreement that at six o'clock we will not see the clock for the purpose of completing this business, and then all other items would stand.

**Senator Lynch-Staunton:** No other business except the adjournment.

**Senator Kinsella:** Honourable senators, I will be brief. I wanted to make a couple of points on this bill. Senator Forrestall spoke for us at second reading and made our support of the bill clear. The expression that we have now had from Senator Andreychuk also underscores the support that is here and the technical problems have been identified.

• (1800)

As you can appreciate, we are particularly pleased with the progress that has been made by the Senate. As we were reminded, our national leader, the Honourable Peter Mackay, was and is the member of Parliament for Pictou—Antigonish—Guysborough.

**The Hon. the Speaker:** I regret to interrupt. It being six o'clock, is it agreed that we not see the clock?

**Hon. Senators:** Agreed.

**Senator Kinsella:** A number of years ago, Mr. Mackay introduced a motion calling on the government to bring forward this type of bill. We congratulate the government for doing that and are pleased to be supporting such a bill.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I met with the committee a few minutes ago. They have put forward a request that this bill be given a formal Royal Assent process, rather than the written one that we sometimes use. I want them to know that that is the way in which we will proceed.

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

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

**Hon. Senators:** Question!

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

[*Translation*]

#### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we had agreed to have all items on the Orders of the Day that had not been reached stand in their place until the next sitting of the Senate. I so move.

I am being reminded that His Honour may be ready to rule on a point of order. This is beyond my abilities. If we stood all these items, it would not interfere with making his ruling.

[*English*]

**The Hon. the Speaker:** Honourable senators, I am ready to respond to Senator Kinsella's request. However, I am not sure whether you want me to, given the agreement.

**Senator Kinsella:** We have an agreement.

**The Hon. the Speaker:** My sense is that we proceed to the adjournment, based on the exchange I heard between the two house leaders.

[*Translation*]

#### ADJOURNMENT

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

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

That when the Senate adjourns today, it do stand adjourned until Monday, November 3, 2003, at 2 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Monday, November 3, 2003, at 2 p.m.

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**THE SENATE OF CANADA  
PROGRESS OF LEGISLATION**

**(2nd Session, 37th Parliament)**

**Thursday, October 30, 2003**

**GOVERNMENT BILLS  
(SENATE)**

<b>No.</b>	<b>Title</b>	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>Committee</b>	<b>Report</b>	<b>Amend</b>	<b>3<sup>rd</sup></b>	<b>R.A.</b>	<b>Chap.</b>
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

**GOVERNMENT BILLS  
(HOUSE OF COMMONS)**

<b>No.</b>	<b>Title</b>	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>Committee</b>	<b>Report</b>	<b>Amend</b>	<b>3<sup>rd</sup></b>	<b>R.A.</b>	<b>Chap.</b>
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12 03/10/07	5 —	referred back to Committee 03/09/25 03/10/21		
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided  Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	—	—	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	—	—	Legal and Constitutional Affairs	03/05/15	5  Message from Commons-agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons-disagree with Senate's amendments 03/09/30			
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 <sup>rd</sup> 02/12/04 2 at 3 <sup>rd</sup> 03/02/04	03/02/04	03/03/19	2/03
C-13	An Act respecting assisted human reproduction	03/10/28							
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	—	—	—	02/12/11	02/12/12	27/02
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act 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	03/06/03	03/06/13	National Finance	03/09/18	0			
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-32	An Act to amend the Criminal Code and other Acts	03/10/30							
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02	03/10/27	Rules, Procedures and the Rights of Parliament					
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-36	An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence	03/10/28							

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-37	An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts	03/10/20	03/10/27	Social Affairs, Science and Technology					
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07	03/10/29	Legal and Constitutional Affairs					
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07	03/10/20	20/03
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-45	An Act to amend the Criminal Code (criminal liability of organizations)	03/10/27	03/10/29	Legal and Constitutional Affairs	03/10/30	0	03/10/30		
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	—	—	—	03/06/18	03/06/19	13/03
C-48	An Act to amend the Income Tax Act (natural resources)	03/10/22	03/10/27	Banking, Trade and Commerce					
C-49	An Act respecting the effective date of the representation order of 2003	03/10/23							
C-50	An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans	03/10/27	03/10/29	Social Affairs, Science and Technology					
C-53	An Act to change the names of certain electoral districts	03/10/23	03/10/29	Legal and Constitutional Affairs					
C-55	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/10/28							

#### COMMONS PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	—	—	—	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30	03/10/22	National Finance					
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03
C-459	An Act to establish Holocaust Memorial Day	03/10/21							

## SENATE PUBLIC BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology	03/10/23	0			
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0			
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages					
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02	03/10/21	Legal and Constitutional Affairs					
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08 Social Affairs, Science and Technology					
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16							
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							
S-24	An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin)	03/10/23							

#### PRIVATE BILLS

No.	Title	1 <sup>st</sup>	2 <sup>nd</sup>	Committee	Report	Amend	3 <sup>rd</sup>	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce	03/10/30	1			

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