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(HANSARD)

Thursday, November 6, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Thursday, November 6, 2003

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

UNITED NATIONS

ACCESS TO CLEAN WATER

Hon. Madeleine Plamondon: Honourable senators, I would like to bring to your attention a problem that should concern all of us: access to clean water.

In 1950, there were 2.5 billion people in the world, and today there are 6 billion. Over that time, the amount of renewable water resources per capita has dropped 58 per cent.

In 2025, two-thirds of the world's population will be faced with serious water shortages. Seventy per cent of water-borne diseases are avoidable.

Why should we care**,** honourable senators? First of all, because water is a gift. All too often, we take water for granted: the water we drink, the water we use for cooking, the water we bathe or swim in. Water plays a symbolic role in all religions, purifying, refreshing, and giving life.

Access to water is a human right, yet one person in six does not have access to clean water. In Africa and Asia, women have to go an average of six kilometres every day, carrying water containers that weigh as much as 20 kilograms. One person in two is exposed to contaminated water. There is one water-related death every 14 seconds.

We Canadians are not exempt from water shortages. There are often bans on watering lawns and washing cars, but we never lack water to drink.

Water is not a commodity. When governments run into financial problems, they are tempted to privatize water treatment and distribution. This means that families no longer able to pay their bill will have their service cut off. Every time there is privatization, costs go up considerably.

In Manila, costs have escalated, leaving one person in five without water service. Since 1994, 10 million people in South Africa have had their water cut off. In Canada, seven people died from drinking contaminated water in Walkerton in June 2000.

Water is a communal inheritance that deserves public and transparent management. While only 5 per cent of water delivery systems are privatized today, we must remain vigilant because the temptation keeps surfacing more and more often in the media.

United Nations Secretary General Kofi Annan said:

> Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.

Therefore, let us support Development and Peace, whose slogan this year is "Water: life before profit."

THE HONOURABLE PIERRE CLAUDE NOLIN

RECIPIENT OF RICHARD J. DENNIS DRUGPEACE AWARD FOR OUTSTANDING ACHIEVEMENT IN THE FIELD OF DRUG POLICY

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am pleased to advise you that tomorrow, in Meadowlands, New Jersey, our honourable colleague, Senator Pierre Claude Nolin, will be honoured by the Drug Policy Alliance.

[*English*]

Senator Nolin will be honoured along with Vancouver Mayor Larry Campbell and his predecessor Philip Owen, according to the citation, because they:

> ...have worked courageously to promote and implement more sensible drug policies in Canada...

I also want to quote from the citations that are applicable to the three honourees:

> Canada is now the clear leader in North America on issues ranging from medical marijuana to preventing HIV/AIDS among injection drug users. Canadians suffering from AIDS, cancer, and other serious illnesses have had legal access to medical marijuana since 1999, and this summer the Canadian government began providing medical marijuana to those with a doctor's recommendation. In September, North America's first government-sponsored safe consumption site for users of heroin and other drugs opened in Vancouver. Canada's Parliament is now considering decriminalizing marijuana, and heroin prescription trials are expected to start shortly in Toronto, Montreal and Vancouver.

Senator Nolin joins a distinguished group of past recipients that includes former U.S. Surgeon General Jocelyn Elders; former Prosecutor General of Bogota, Gustavo de Greiff; and Gary Johnson, former Governor of New Mexico.

[*Translation*]

Congratulations, dear colleague, for this much-deserved recognition.

[*English*]

UNITED KINGDOM

LEGISLATIVE BODY TO PROMOTE HUMAN RIGHTS

Hon. Donald H. Oliver: Honourable senators, Canada's High Commissioner to the United Kingdom is Mr. Mel Cappe, who used to be the Clerk of the Privy Council here in Ottawa. He recently sent me some information about a unique event taking place in the United Kingdom. Under plans announced on October 30, the work of the existing equality commissions — the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission — will come together to give greater support and joined-up advice on discrimination and promote equality and diversity.

This is a new legislative body to provide support for the promotion of human rights. Part of its responsibility will be to propose new laws to outlaw workplace discrimination based on age, religion or belief, and sexual orientation. Provisionally called the Commission for Equality and Human Rights, the new commission is the result of the biggest review of British equality institutions in a quarter-century. The new commission is intended to promote equality and diversity. It would also foster an understanding of the important role seniors, homosexuals, visible minorities, women and people with disabilities play in creating a prosperous and cohesive society.

• (1340)

Patricia Hewitt is the trade and industry secretary in the U.K. She is also the minister for women. In a statement, Ms. Hewitt said:

> We are committed to providing opportunity for all and equality matters to everyone — it is not a minority concern. A successful society must make full use of the talents of all its members... tackling discrimination in the 21st Century requires a joined-up approach that puts equality in the mainstream of concern... As individuals, our identities are diverse, complex and multi-layered. People don't see themselves as solely a woman, or black, or gay and neither should our equality organizations... By bringing these bodies into one organisation we will make life much easier for individuals to get help and advice, especially when they are discriminated against on more than one level.

Honourable senators, as Lord Falconer states, "Human rights and equality are two sides of a single coin — respect for the dignity and the value of each person." The actions taken by the British government should serve as an example to others, including Canada. By following a similar mandate, other governments can take solid steps toward ensuring that visible minorities are treated equally in Canada as citizens.

NATIONAL DRUG STRATEGY

CANNABIS USE—MARIJUANA BILL

Hon. Gerry St. Germain: Honourable senators, this statement can be considered a dissenting view.

Soon the other place will be sending us a bill that will make amendments to the Criminal Code for cannabis possession and grow operations. The National Drug Strategy announced in conjunction with the decriminalization bill reveals the shameful failure of the Liberal government to fulfil its promises to the Canadian people. Funding allocated to this National Drug Strategy is merely half of what was promised.

As a former police officer, I firmly agree with the serious concerns raised by the Canadian Professional Police Association, the Canadian Medical Association, and the group of Mothers Against Drunk Driving. In a letter to the Prime Minister dated October 21, 2003, the Canadian Professional Police Association stated the following:

> Canada needs and deserves a national drug strategy. A national drug strategy that invests in research, prevention, treatment, enforcement and innovative programs...a truly Canadian drug strategy that is integrated, resourced, and sustainable.

This goal of ensuring public health and safety cannot be realized if the government continues to provide 50-cent dollars.

Honourable senators, cannabis use is not only a criminal justice issue, it is also a health issue. According to a study conducted by the Canadian Medical Association, cannabis slows reaction times, impairs motor coordination and is also associated with impairment of attention, memory and other mental processes.

While the jury is still out on the value of medical marijuana, it is clear that all other uses are destructive. It is a contradiction for the government to aggressively advocate against smoking tobacco while at the same time aggressively pursuing legal measures that will clearly lead to normalizing the use of another harmful substance, one that has mind-altering and carcinogenic effects.

Just last week, the national news reported that while teenaged tobacco smoking has decreased, the number of Canadian youth smoking marijuana has more than doubled. The government has clearly sent the message to Canadian teenagers that smoking tobacco is bad, but smoking marijuana is literally okay, that drug use in moderation is okay.

Smoking anything is simply destructive to one's health. The moment we accept the use of mind-altering drugs as a common practice, we move closer and closer toward moral decay in our society. Public health and public safety must be our highest priority on this matter.

Honourable senators, we cannot continue to ignore the implications of our actions on our neighbours. The government must acknowledge that good bilateral negotiations are built on mutual trust and respect, and Canada must recognize that working with our bordering neighbours is in our mutual interest.

OSTEOPOROSIS MONTH

Hon. Yves Morin: Honourable senators, November is Osteoporosis Month, a time to remember that early detection and treatment may prevent fractures and help Canadians maintain an independent and active lifestyle as they age. Each year, almost 30,000 Canadians fracture a hip, 70 per cent of them because of osteoporosis.

[*Translation*]

One-quarter of these patients do not survive these fractures; and another one-quarter cannot return to their homes. This condition not only greatly affects patient autonomy, but also creates very stressful situations in the families of hip fracture victims.

[*English*]

Osteoporosis is called the "silent thief" because of what it steals from its sufferers. It can steal their appearance, their ability to work, their connections with family and friends and, in some cases, their lives.

The Osteoporosis Society of Canada ensures that the latest prevention, diagnosis and treatment options are available to all Canadians. The society offers a wide variety of resources and educational programs to the public and supports osteoporosis research.

[*Translation*]

Recently, Dr. Jacques Brown and his colleagues at Laval University in Quebec City published new clinical practice guidelines for the diagnosis and treatment of osteoporosis in Canada. These guidelines follow an extensive review of the scientific literature on the subject and will be a valuable aid to all health professionals involved in the clinical field of osteoporosis.

[*English*]

The Canadian Institutes of Health Research's Institute of Musculoskeletal Health and Arthritis, led by Dr. Cy Frank, is working with partners such as the Osteoporosis Society to eradicate the pain of osteoporosis and assist Canadians to live healthy lives. Dr. Christopher Kovacs from Memorial University in St. John's is exploring why women who breastfeed are able to regain the calcium they lose within weeks of weaning, returning their skeletons to pre-pregnancy bone densities. Learning how and why this happens could provide clues about how to rebuild bone density in others — the ultimate and elusive goal for treating osteoporosis.

Honourable senators, we can all reduce the toll of osteoporosis by supporting the remarkable work of the Osteoporosis Society of Canada and by making sure that all Canadians are made aware of the risk factors of this common condition.

BHUPINDER LIDDAR

CONGRATULATIONS ON APPOINTMENT AS CONSUL GENERAL

Hon. J. Michael Forrestall: Honourable senators, I rise briefly to join, for anyone who was in the Reading Room of Parliament the night before last, what could only be described as wall-to-wall numbers of people who turned out to send their congratulations to a still relatively young man who has just been named head of a Canadian mission in India.

I speak of Bhupinder Liddar, who became a very good friend through the 1960s to the 1970s and 1980s. A gentleman from Prince Edward Island and I, a long-time member of Parliament, a member of the class of '57 named Heath Macquarrie, in the old days literally shared offices and secretaries, so we were very close. Mr. Liddar did research work for both of us. We got to know him well. We got to know his enthusiasm. As a matter of fact, it was that very enthusiasm that brings me to my feet today to say to the Government of Canada, "At long last, you have righted an old wrong."

I welcome Bhupinder Liddar's appointment. His qualifications are known to virtually all of us in this chamber. He is well educated in social sciences and international relations. He is a columnist, broadcaster, program host and researcher. Above all, he was perhaps the most knowledgeable young person I ever met on matters in the Middle East. His travel experience includes the world. His friends and acquaintances are those he has met and those who knew him by his mark, his reputation.

• (1350)

I wish Mr. Liddar well, and I do so before the flood of appointments — all of which, I am sure, will be very good — that is bound to come out of the office on the other side of the building in the next few days.

The Hon. the Speaker: Senator Forrestall, I regret to advise that the 15-minute time period for Senators' Statements has expired.

[*Translation*]

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES

GOVERNMENT RESPONSE TO COMMITTEE TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, pursuant to rule 131(2), I have the honour to table, in both official languages, a document entitled "The Government Response to the Third Report of the Standing Senate Committee on Official Languages on: Environmental Scan: Access to Justice in Both Official Languages."

INTERNATIONAL LABOUR CONFERENCE

DOCUMENT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a document entitled "Canadian Position with Respect to Recommendation 193, a Protocol to Convention 155 and Recommendation 194" adopted at the 90th session of the International Labour Conference in Geneva, Switzerland in June 2002.

[*English*]

STUDY ON IMPACT OF CLIMATE CHANGE

REPORT OF AGRICULTURE AND FORESTRY COMMITTEE TABLED

Hon. Donald H. Oliver: Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Agriculture and Forestry, which deals with the impact of climate change on Canada's agriculture, forests and rural communities and the potential adaptation options focusing on primary production, practices, technologies, ecosystems and other related areas.

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

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

STUDY ON FIREARMS ACT

REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE TABLED

Hon. George J. Furey: Honourable senators, I have the honour to table the ninth report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with regulations made pursuant to an act respecting firearms and other weapons, Statutes of Canada, 1995, chapter 39, as contemplated by section 118(3) of that act.

INCOME TAX ACT

BILL TO AMEND—REPORT OF COMMITTEE

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

Thursday, November 6, 2003

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

SIXTEENTH REPORT

Your Committee, to which was referred Bill C-48, *An Act to amend the Income Tax Act (natural resources)*, has, in obedience to the Order of Reference of Monday, October 27, 2003, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

RICHARD H. KROFT
Chairman

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

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

[*Translation*]

SCRUTINY OF REGULATIONS

FOURTH REPORT OF JOINT COMMITTEE TABLED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour to table the fourth report of the Standing Joint Committee for the Scrutiny of Regulations concerning user fees in national parks.

[*English*]

STUDY ON TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO

INTERIM REPORT OF FOREIGN AFFAIRS COMMITTEE TABLED

Hon. Peter A. Stollery: Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Foreign Affairs, an interim report entitled: "The Rising Dollar: Explanation and Economic Impacts," Volume 2.

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

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

[*Translation*]

FISHERIES AND OCEANS

REPORT OF COMMITTEE ON QUESTION OF PRIVILEGE RAISED ON MAY 27, 2003 PRESENTED

Hon. Gerald J. Comeau, Chair of the Standing Senate Committee on Fisheries and Oceans, presented the following report:

Thursday, November 6, 2003

The Standing Senate Committee on Fisheries and Oceans has the honour to present its

SEVENTH REPORT

Pursuant to Appendix IV of the *Rules of the Senate*, your committee hereby reports on the question of privilege raised by the Honourable Senator Comeau on Tuesday, May 27, 2003.

On Thursday, May 15, 2003, the Canadian Press ran a story dealing with artificial reefs, one topic addressed in a confidential document that your committee had considered in camera two days earlier. On Friday, May 16, several newspapers picked up this story.

On Tuesday, May 27, 2003, the first day on which the Senate sat following the initial publication of this story, the Chair of your committee, pursuant to rule 43, gave written notice of, and subsequently raised in the Senate, a question of privilege relating to this matter. The Speaker ruled that there was a *prima facie* question of privilege and, pursuant to Appendix IV of the *Rules of the Senate*, your committee was charged with examining the matter and reporting thereon to the Senate.

Your committee subsequently reviewed the matter and has concluded that the premature release of material did not affect the content of its Fifth Report, which was tabled in the Senate on Monday, June 16, 2003. The material to which the media made reference dealt with a subject that had been dropped from the report prior to the disclosure. Where this premature release could, however, have had negative effects was on the collaborative working relationship between members of the committee. This working relationship is extremely close, having been built up over many years. An incident such as this leak has the potential to decrease this strong sense of trust and teamwork.

Your committee has also concluded that the rigor of a formal investigation could have significant detrimental effects on the excellent relationships between members of your committee, their employees, and the staff of your committee, and would therefore have a negative impact on the committee's effectiveness. Actions such as hiring an external investigator could compromise even further the cohesion of the committee. Your committee is also far from confident that a more in-depth formal investigation would actually succeed in identifying the source of the leak.

Your committee's general conclusion is that the leak, while highly regrettable, was accidental. It probably arose from a failure to appreciate fully the importance of respecting the confidentiality of matters dealt with in camera and related documents.

Your committee takes this opportunity to emphasize, to all senators, Senate staff, and others involved in dealing with confidential documents, the importance of dealing with these in the most cautious manner. It is, in dealing with these materials, always better to err on the side of caution in order to avoid the inadvertent release of information that the Senate is entitled to receive first.

In light of the above, your committee recommends that no further action be taken in relation to this particular leak.

Respectfully submitted,

GERALD J. COMEAU
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

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

STUDY ON MATTERS RELATING TO STRADDLING STOCKS AND TO FISH HABITAT

INTERIM REPORT OF FISHERIES AND OCEANS COMMITTEE TABLED

Hon. Gerald J. Comeau: Honourable senators, I have the honour to table the eighth report of the Standing Senate Committee on Fisheries and Oceans, an interim report entitled "Fish Habitat."

I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

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

ADJOURNMENT

NOTICE OF MOTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate I will move:

> That when the Senate adjourns on Monday, November 10, 2003, it do stand adjourned until Wednesday, November 12, 2003, at 1:30 p.m.

[*English*]

CANADIAN INTER-PARLIAMENTARY GROUP

ONE-HUNDRED AND EIGHTH CONFERENCE OF INTER-PARLIAMENTARY UNION, APRIL 3-12, 2003—REPORT TABLED

Hon. Donald H. Oliver: Honourable senators, I have the honour to table the report of the Canadian Inter-Parliamentary Group, respecting its participation at the one-hundred and eighth conference and related meetings of the Inter-Parliamentary Union, held in Santiago, Chile from April 3 to April 12, 2003.

• (1400)

[*Translation*]

OFFICIAL LANGUAGES

BILINGUAL STATUS 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, the petitions signed by 1,000 other people, for a total of 17,000 people who are asking that Ottawa, the capital of Canada, be declared a bilingual city reflecting the country's linguistic duality.

The petitioners are calling on Parliament to consider the following points:

> 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 the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and 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

HERITAGE

SIR JOHN A. MACDONALD DAY AND SIR WILFRID LAURIER DAY— DELAY IN EXECUTING PARLIAMENT'S WISHES

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the minister will recall, as all of us will, that on March 21 of last year, 2002, Royal Assent was given to Bill S-14, an act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day. By the way, it was a bill that was initiated in this place. Parliament's intention, through this legislation, is to give national prominence to these remarkable Prime Ministers on their respective birthdays — January 11 and November 20.

I would ask the minister whether she can explain why, over one-and-a-half years later, Canadian Heritage — as far as I and the sponsor of the bill in the House have been able to find out — has yet to commit itself to executing Parliament's wishes, particularly in light of the fact that Sir Wilfrid Laurier Day is only 14 days away?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question, and I assure him that I will take that matter up with the minister and her department as soon as I have a moment away from this chamber.

Senator Lynch-Staunton: We can certainly suspend for the time needed, as far as I am concerned. However, there is more. I saw in *Quorum* today a report from *The Province* to the effect that the Prime Minister was engaged in a photo opportunity to mark Hockey Week in Canada. That is fine, but surely the same prominence can be given to reminding Canadians of the tremendous contributions made by two great Prime Ministers, Macdonald and Laurier. Last year nothing was done. They could plead that they did not have enough time or that there was no money in their budgets. Canadian Heritage and other departments inundate us for weeks and days with press releases and glossy books, and yet two extraordinary Canadians, Canadian Prime Ministers, are being totally ignored.

This is not a recognition that was just plucked out of the air; this was consented to after a debate in both Houses and was the subject of a bill which was given Royal Assent. Yet as far as I can see — and I hope the minister can come back soon and deny it — Canadian Heritage is totally ignoring the wishes of Parliament.

Senator Carstairs: I thank the honourable senator for his question. As a former history teacher, I can assure him it concerns me as much as it concerns him. I must say I am shocked, given the enormous respect that our present Prime Minister has for Sir Wilfrid Laurier, that there has not been a plan put into place. Like Senator Lynch-Staunton, I am concerned about this and I also think we should pay the same type of tribute to Sir John A. Macdonald, the founding Father of Confederation, as we do to Sir Wilfrid Laurier. I will look into the matter immediately.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—INFORMATION PROVIDED BY CANADIAN OFFICIALS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is to the minister and has to do with respect to Mr. Arar. Yesterday, the Prime Minister said that he had asked the United States to hand over the names of Canadian officials who may have provided information to the U.S. intelligence community.

Can the Leader of the Government in the Senate tell us when the government expects to receive this information from the United States? When it does, will it be shared with both Houses of Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the request has been made directly, I understand, from the Minister of Foreign Affairs to the appropriate official, Colin Powell, in the United States. I do not know if anything has yet been received from the United States or when we would expect to receive something from them.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—MEETING WITH CONSULAR OFFICIAL

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Mr. Arar, in his meeting with the press the other day, said that when he was in New York prior to his being whisked away to Jordan, he had been visited by officials of the Canadian Consulate in New York. As I listened carefully to what Mr. Arar said, he used the feminine pronoun "she" in reference to the Canadian consular official.

My question is: Was Pamela Wallin, the consul in New York for Canada, the person who met with Mr. Arar?

Hon. Sharon Carstairs (Leader of the Government): I do not know, senator.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—PROVISION OF APARTMENT LEASE AGREEMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Can the government tell us, if these inquiries are being made of Secretary Powell or other officials in the United States, would it also include how a copy of Mr. Arar's apartment rental lease came to be in the possession of the FBI and the U. S. immigration officials, given the fact that both Mr. Arar and the Minto Development Company here have said that they did not release the document to anyone?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that is clearly as much of an important question as who were the officials from Canada, if any, who may have provided information. This seems, I think, to be one of those critical pieces of information about which the question is being asked.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, some of us have raised this issue before. It started on October 22, 2002, which is not very recently. I have all the names of people who participated on this issue, which is my way of working. I am sure that Mr. Harper may not be too happy about what he said on Monday, November 18, 2002. He may have to live with that, but that is what happens sometimes when you get carried away.

En passant, happy birthday to Senator Fairbairn and my colleague Senator St. Germain.

It seems evident, Madam Leader, that Canadians will not let this matter go. That is evident when you see *The Globe and Mail* and all the newspapers in Canada saying that only an inquiry which is public and independent will help us get to the truth, as painful as the truth may be.

I ask the minister again to please convey my request. I do not want to bother you or be aggressive to anyone in particular. I beg of you, in the name of Canadian sanity; otherwise, it will drag on and on.

People think that this case will disappear because soon we will be gone from here. I can tell you that it will not disappear. People want to know. There is nothing like having the truth come out. Sometimes it is better to cut your losses right at the beginning rather than having to face the consequences. A case such as this is disagreeable and bad for us in Canada.

I have the greatest respect for the Prime Minister of Canada, and it is too bad we cannot attend the tributes to Mr. Chrétien this afternoon at 3 p.m. in the House of Commons. I wish I could be there, but I must be here.

Madam Minister, I put to you this question: Would you kindly convey again to your colleagues in cabinet that perhaps it is time to cut their losses and to agree to an inquiry?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will certainly inform my colleagues of the honourable senator's interest in this matter.

TREASURY BOARD

PUBLIC ACCOUNTS—PREMIUM RATES FOR EMPLOYMENT INSURANCE—FUND SURPLUS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It deals with the Public Accounts and Employment Insurance. My question arises from comments that the Auditor General wrote in the Public Accounts that were tabled in the Senate last Tuesday.

• (1410)

In her observations to the Public Accounts, Sheila Fraser wrote:

> The Government has still not addressed the long-standing issues related both to setting premium rates for Employment Insurance and to the appropriate size of the surplus in the Employment Insurance Account.
>
> In 2002-03, Employment Insurance (EI) surplus grew by $3.3 billion to $43.8 billion. This is about three times higher than the Chief Actuary of Human Resources Development Canada said was necessary in his 2001 report on Employment Insurance premium rates.

Honourable senators, two full years have now passed since the Chief Actuary's 2001 report. For what reason other than "we need the money," is the government continuing to run an annual surplus of several billion dollars in the EI account?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows full well, Budget 2003 set the premium rate for 2004 at $1.98 and at the same time launched a consultation with Canadians on a new EI rate-setting regime for 2005 and beyond.

Senator Oliver: Honourable senators, last year, the EI surplus was $3.3 billion and the overall government surplus was $7 billion. As of last year, the cumulative EI surplus was $44 billion. The amount of debt repaid was $52 billion.

Will the government leader confirm the basic math that shows that overcharging Canadian workers and those who employ them for employment insurance equals almost half of last year's surplus and 85 per cent of the total debt reduction to date?

Senator Carstairs: The honourable senator knows full well that the rate-setting of EI premiums has consistently been reduced over the last five years and hopefully with the report for 2005 will continue to be so.

FOREIGN AFFAIRS

UNITED NATIONS—VOTE TO SUPPORT NEW AGENDA RESOLUTION ON NUCLEAR DISARMAMENT

Hon. Douglas Roche: Honourable senators, my question is directed to the Leader of the Government in the Senate. The minister will recall that I asked her last week to carry forward to the government my request, and that of many Canadians, that Canada vote "yes" on the important New Agenda Resolution at the UN First Committee dealing with the 13 practical steps for nuclear disarmament.

I am glad to say that two days ago Canada did vote "yes," the only NATO country to do so, thus confirming Canada's place as a leader in the nuclear disarmament agenda. I wish to express my thanks to the government and the leader for her role in this achievement.

Will the government, at the departmental level, now examine the implications of Canada's step forward in being the only NATO country to vote for the New Agenda Resolution two years in a row and consider how, with the help of organizations such as the Middle Powers Initiative, Canada might be able to build a bridge between NATO and the new agenda countries in an effort to strengthen the Non-Proliferation Treaty Review Conference of 2005?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator opposite should not sell himself short. Clearly, he brought the matter to the attention of this chamber, and I brought it forward from there. I know that others were obviously considering the matter.

In terms of the question and advice the honourable senator has raised this afternoon, let me assure him that I will go forward in the same way as I did with the other.

REPORT ON CANADIAN ROLE IN BALLISTIC MISSILE DEFENCE SYSTEM

Hon. Douglas Roche: Honourable senators, the report of the recent Lu Institute Conference on a possible Canadian role in the U.S. ballistic missile development program is now ready. This is the report to which I referred some time ago. It provides solid reasons for Canada not to join this program. The Minister said previously that she would hand deliver this report to the Prime Minister. Will she give this matter the same priority and attention that she gave the New Agenda Resolution?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can assure the honourable senator that I take forward the collective views of the members of the Senate individually as they make them known to me and collectively as we do in motions and votes of this chamber.

Of course, I would be more than pleased to put this evidence and study before the Government of Canada and the Prime Minister.

HEALTH

REQUEST TO BAN USE OF TRANS FATS IN FOOD AND IMPLEMENT MANDATORY LABELLING

Hon. Mira Spivak: Honourable senators, trans fatty acids, the hidden fat in snack foods, processed foods and fast foods, have absolutely no nutritional value and can contribute to soaring rates of obesity, diabetes, heart disease and maybe even Alzheimer's disease.

Minister Anne McLellan has stated that while she will introduce mandatory nutritional labelling for foods containing transfatty acids, she will not ban the use of them.

A blue ribbon panel of U.S. scientists has found there is no safe level of trans fat, and even 1 gram, the amount in one frozen waffle, can increase the risk of heart disease by 20 per cent.

Trans fat is much worse than saturated fat because, while saturated fat raises the level of bad cholesterol, trans fat not only raises low-density lipoproteins but also prevents good cholesterol, high-level lipoproteins, from doing its job of clearing the circulatory system, and they are particularly dangerous for children.

Since they are so dangerous for children, can the Minister of Health be persuaded to ban the use of trans fats as Denmark has done, a more powerful policy than simply labelling?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator herself has pointed out, the decision to date has been that we will provide better nutritional data for trans fatty acids. In terms of whether an outright ban will be considered, while there are many in the scientific community who think this may be a good idea, I am afraid there are all too many Canadians who still want to eat their trans fatty acids. Before we reach the level of deciding to ban such things, we need to conduct a major education program in this country on how to eat healthier foods.

Senator Spivak: Of course there are always alternatives, but it is alarming that most popular children's snacks, such as Goldfish, microwave popcorn, pizza and fruit roll-ups, contain high amounts of trans fat.

Mandatory labelling will not come into effect until 2006 for large companies. Most packaged meat will be exempt, as well as foods for children under the age of two, including baby formula and Arrowroot cookies, all of which contain trans fat. Also, menus in restaurants will not have to disclose nutritional information.

Since doctors agree that the recommended level of trans fat in the diet is zero, could the Leader of the Government ask the Minister of Health to explain why Health Canada is taking such a timid and dangerous laissez-faire approach, especially since we have banned caffeine from Mountain Dew, which young hockey players love to drink, although Americans allow it and Pepsi Cola has pressured us to do so as well?

There is a precedent.

Senator Carstairs: I think the honourable senator would agree that it is somewhat easier to ban caffeine in one drink than it is to ban the entire spectrum of trans fatty acids. I would repeat my earlier reply: I think we have to do a better job of educating Canadians about how both their digestive systems and their overall health are impacted by the food that they eat. I must tell the honourable senator that what distresses me as a former educator is the fact that there are very few healthy eating programs anywhere in the schools of this nation.

• (1420)

Senator Spivak: Honourable senators, I have a last comment but not a question.

We have forced the reduction of tropical oils. Since consumers are so bombarded with products containing these oils, especially kids — and kids do not read labels and they will eat what they want to eat — it seems to me that a safer approach is to ban them entirely. That is my opinion.

FOREIGN AFFAIRS

SRI LANKA—PEACE TALKS— REASSESSMENT OF GOVERNMENT AID

Hon. A. Raynell Andreychuk: Honourable senators, I want to return to the issue of Sri Lanka. Since I raised the question yesterday, the government has moved to impose a state of emergency on that country. This will be devastating to the economy that was just beginning to be trusted for trade, investment and tourism, which are the staples of success in that country. This decision will obviously throw the peace process into extreme turmoil.

I ask the Leader of the Government in the Senate: First, what is Canada doing to assess the situation? Are we taking steps to approach both parties to the peace process to ensure that neither will take advantage of civilians at this critical time? Second, will the Canadian government reassess its program of aid not to the people of Sri Lanka but to their government? We were involved in some of the organizational support systems to this government, as it appeared to be on the road to recovery and to peace and justice. Due to the actions of its president, which to this point appear to be totally unwarranted, this country is being thrown into absolute crisis.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am sure that the honourable senator understands that the Department of Foreign Affairs is looking at this situation in a new way because of the events that have unfolded in that country.

I do not think that at this moment any decisions have been made, but I can assure the honourable senator that, for obvious reasons, this matter is higher on the radar screen than it was just a few short weeks ago.

Senator Andreychuk: Honourable senators, the briefings that I received from our High Commissioner in Sri Lanka lead me to believe that the personnel we have on the ground there are extremely competent and understand the issues. It would seem to me that this would be the point for the Canadian government to take action, not only through our High Commissioner in Sri Lanka, but also by calling in the High Commissioner here, who is an extremely professional woman, to see what we can do to alert her that this is a disaster in the making. I think we should use the people we have on the ground, both here and there, to impress upon them the point that we are not taking sides, but that the way that they are approaching their internal personality differences and the way that they are resolving opposition difficulties is putting civilians at risk — the very same people who have been the subject of the turmoil of this country for so many decades. It will be the civilians on the ground, who were just reclaiming their position and were just being able to start small businesses, who will suffer most. Hundreds of people in villages had optimism. Now, it is being totally destroyed and the country has reverted to chaos.

I would hope that we would utilize the staff at the High Commission to impress upon all of the good contacts that we have there at every level that this must be stopped. They must go back to the bargaining table, the negotiating table, on their own political issues, as well as on the peace process.

Senator Carstairs: I thank the honourable senator for her suggestions. She can rest assured that they will be brought forward.

SOLICITOR GENERAL

RCMP—BREACH OF HILL SECURITY

Hon. J. Michael Forrestall: Honourable senators, I have a question arising out of the incident yesterday in front of the Parliament Buildings involving a motorist who wanted a good parking space. Can the Leader of the Government in the Senate fill us in on the status of the police investigation to date, and can she shed any light at all on how the woman got past the RCMP and on to the Hill? Had she had any malicious intent and had it been carried out, many of us might not be around today.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, for those individuals in the chamber who may not know what occurred yesterday, let me give a brief summary.

Apparently, a female driver in a truck attempted to come into —

Senator Forrestall: It was a car.

Senator Carstairs: Senator Forrestall tells me it was a car. I was told it was a truck.

Senator Forrestall: We watched it from our office window.

Senator Carstairs: This woman attempted to enter by the Metcalfe entrance, which is used exclusively by senators and members of Parliament.

The RCMP apparently signalled for her to stop. She did not. She kept on going. Whether her intention was to find a good parking spot I have no idea, but she did go through. She was quickly detained and arrested. The RCMP is now in charge of the case and is investigating further.

Senator Forrestall: I thank the minister for that brief update.

NATIONAL DEFENCE

SAFETY OF SEA KING HELICOPTERS— USE OF SEA KING BY U.S. PRESIDENT— USED EQUIPMENT

Hon. J. Michael Forrestall: Honourable senators, the government has tried by a variety of methods to rid this nation of Sea King helicopters. I notice that you are now burning them. My question, however, is not about that; it is about security or safety, which is the tenor of my earlier question. The Prime Minister has made fun of this in the other place. The Leader of the Government in the Senate made reference to it on a number of occasions. If the Sea Kings are so unsafe, why does the President of the United States use one? While we are now going through the investigation of the undercarriage and all the other "new" parts to the aged Sea Kings, could the minister file in this chamber a written report to show that the presidential Sea King fleet in the United States is not made up of refurbished materials — that is to say, used military engines and used machine spare parts, which is the case with Canada's Sea Kings? Would the minister acknowledge that there is nothing on the President's Sea King helicopter that is not brand new?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator first began with a discussion of burning the Sea Kings. When I first saw the incident, I thought the honourable senator had become so desperate to get new ones that perhaps he had had something to do with it. I am being totally facetious in this respect, obviously.

What happened, honourable senators, was that a Sea King helicopter caught fire in a hangar during routine maintenance work. Apparently, the incident was minor. Obviously, that particular aircraft will have to be repaired in all the necessary aspects before it can be airborne again.

As to the Sea Kings that are used by the President of the United States, I cannot possibly gather the information that has been requested because those vehicles are within the military purview of the United States. With regard to whether any used parts have ever been used, I can say with some confidence that, even in the United States, fully operational used parts are undoubtedly used.

Senator Forrestall: Is used equipment installed in the Sea King used by the President of the United States?

• (1430)

[*Translation*]

TREASURY BOARD

USE OF EMPLOYMENT INSURANCE FUND SURPLUS TO REDUCE NATIONAL DEBT

Hon. Jean-Claude Rivest: Honourable senators, in answer to questions from Senator Oliver about the employment insurance program, the minister indicated that the government did not intend to change its approach. Senator Oliver stressed how unjust this is for workers, given their contributions and the benefits they receive in return, which are often not commensurate with the premiums paid by workers and employers.

Is the Leader of the Government in the Senate aware that the government is very vocal about how it managed to reduce Canada's public debt by more than $50 billion over the last five or six years? Is the minister aware that, of the $50 billion paid down on Canada's debt, $40 billion came from the contributions of workers and employers to the employment insurance fund? Does the minister believe it is fair to make Canadians, who are contributing to an employment insurance system created for the benefit of all Canadians, pay down the national debt? Is it fair to ask a particular category of Canadians to bear the costs of the public debt for the entire country?

[*English*]

Hon. Sharon Carstairs (Leader of the Government): With the greatest of respect to the honourable senator, he should realize that it is not just workers who pay into the EI fund. Employers also pay into the EI fund. The contribution of employers is 1.4 times the contribution of workers. By the time we include all workers and all employers, practically all Canadians are included, except children.

The reality here is that, yes, there has been a surplus in the EI fund. I think that is preferable to not having adequate monies in the EI fund. In addition, there has been an extension of benefits. One of which I am extremely proud is the compassionate caregiver program that will go into force on January 1, 2004.

The Hon. the Speaker: Senator Rivest, I am sorry, but the 30 minutes for Question Period has expired.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed answer to an oral question raised in the Senate on October 27, 2003 by Senator LeBreton regarding the investigation into payments made to KAGF Consulting.

HEALTH

INVESTIGATION INTO PAYMENTS TO KAGF CONSULTING

(Response to question raised by Hon. Marjory LeBreton on October 27, 2003)

In 1995 Health Canada launched an internal audit of the Sagkeeng Solvent Treatment Centre (the predecessor organization to Virginia Fontaine Addictions Foundation Inc.), which later evolved into the 1997 investigation report.

Health Canada took action as a result of the 1997 investigation, including the development of a management action plan to follow-up on the report's recommendations.

In October 2000, following allegations of the misuse of public funds at the Virginia Fontaine Addictions Foundation, Health Canada immediately launched a forensic audit; contacted the RCMP; launched civil litigation to get back any funds that had been misused and initiated other key audits and reviews, including a review of previous actions taken on the file (completed May 2001).

Health Canada has cooperated fully with the RCMP and will continue to do so.

[*English*]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—MOTION TO REFER TO LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ADOPTED

On the Order:

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

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

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

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

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

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

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, we have before us in this chamber this afternoon a motion to move Bill C-10B to the Standing Senate Committee on Legal and Constitutional Affairs. If we were to pass this motion, it would be the third time that this bill has gone before this committee. I allowed it to go the last time with some reluctance, but at least on the basis of the fact that the information sent from the House of Commons was somewhat different from the information that we had dealt with in our debates and discussions.

This is no longer the case. The message that has come back from the House of Commons is identical to the message we had earlier received. As a result, I see no particular value in sending this bill back to committee.

It is important for us, honourable senators, to realize that while we may not be proroguing this week or next week, or perhaps not even the week after that, prorogation will take place. If we send this bill back to committee, there is every chance that it will die on the Order Paper.

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

Some Hon. Senators: Question!

The Hon. the Speaker: The first matter to be dealt with is the amendment. I will put the question on the amendment.

It was moved by the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003 regarding Bill C-10B, to amend the criminal code (cruelty to animals) be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Senator Lynch-Staunton: I have just written to the Table that Senator Kinsella is the acting whip in the absence of Senator Stratton.

Senator Kinsella: I would propose a half-hour bell.

Senator Rompkey: Senator Murray has enjoined us from time to time that people in the Victoria Building sometimes have a great deal of difficulty getting over here. Perhaps we should have a half-hour bell.

Senator Kinsella: As a very agreeable whip of the opposition, I concur with the chief government whip.

The Hon. the Speaker: The vote will be after a one-half hour bell, which will be at 3:08 p.m. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The vote will be at 3:08, with the bells to ring for half an hour, starting now.

Hon. Marcel Prud'homme: Your Honour, it is sad that we do not have one hour, not because I like to have extra time, but because it is a great national day in history. At 3:00 sharp, the House of Commons will pay homage and testimony to the Right Honourable Mr. Chrétien. If we vote at 3:08, no one here will be in a position to attend. I find that very sad. We have had agreements in the past to listen to testimonials to Mr. Joe Clark, to the Right Honourable Prime Minister Mulroney, to every prime minister. That is a major event in the history of Canada, whatever one thinks of a man who served this country so long and, I would say, so well. I am in the hands of the two whips. Perhaps they would like to reconsider so that senators could attend?

Senators Roche and Plamondon would like to join me in this comment.

Senator Carstairs: The bells are ringing.

The Hon. the Speaker: Honourable senators, the bells are ringing. The vote will be at 3:08 p.m.

Hon. Anne C. Cools: Your Honour, I would just note that I believe the motion is now acceptable to all of us and that it was not a government motion. It was a motion by the Honourable Senator Watt. Senator Watt should have been consulted as to the timing of the bells. This is not just a matter between the two whips. It is not a government initiative.

• (1510)

Motion in amendment agreed to on the following division:

YEAS
HONOURABLE SENATORS

Andreychuk	Kinsella
Bacon	Lapointe
Baker	Lawson
Beaudoin	Lynch-Staunton
Biron	Maheu
Bryden	Moore
Chalifoux	Nolin
Chaput	Oliver
Christensen	Pearson
Cools	Pépin
Corbin	Phalen
Cordy	Pitfield
Doody	Prud'homme
Forrestall	Rivest
Furey	Robertson
Gill	Sibbeston
Hervieux-Payette	Sparrow
Johnson	Spivak
Joyal	Stratton
Keon	Watt—40

NAYS
HONOURABLE SENATORS

Callbeck	Losier-Cool
Carstairs	Merchant
Day	Milne
De Bané	Morin
Downe	Poy
Fairbairn	Ringuette
Fraser	Robichaud
Graham	Roche
Harb	Rompkey
Hubley	Smith
Jaffer	Wiebe—23
Léger	

ABSTENTIONS
HONOURABLE SENATOR

Gauthier—1

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
DEBATE SUSPENDED

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 third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. George J. Furey: Honourable senators, I understood that the motion had been adjourned in the name of Senator Kroft, but he does not appear to be here. I do not know if I should wait or commence. Perhaps we can revert to Senator Kroft later. May I proceed, honourable senators?

The Hon. the Speaker: Honourable senators, we are far enough along that Senator Kroft will be the next on my list, if that is agreeable.

Senator Furey: Honourable senators, I should like to preface my remarks by saying that I fully endorse and support the idea and concept of an ethics officer and a code of ethics for this chamber. However, I must profess that I have problems with Bill C-34 in its present form as the mechanism for attaining this goal.

We have heard many senators raise and debate issues for and against Bill C-34 in its present form. We have heard the "legislative-based versus rules-based" argument. We have heard the "method of appointment" argument. We have heard debate on the question of privilege and many other important issues.

Today, honourable senators, I do not wish to engage in debate on these issues. Today, for a few moments, I would ask all honourable senators on both sides of these arguments to set aside their differences and focus on one proposed section of this bill which I suggest to senators is extraordinary. It is extraordinary in the sense that the removal of this section is, in my humble opinion, necessary to the well-being of this chamber and the well-being of us as individual senators. This section must be removed before we proceed with Bill C-34.

We have occupied our time in this chamber debating such finer points as privilege and whether we are extending it. With all due respect, honourable senators, by speaking extensively about these more complex and most important issues, we may have lost sight of a simpler and very disturbing aspect of this particular bill.

In Bill C-34, in drafting the proposed section 20.6(2), the drafters of this bill have placed the ethics officer above civil and criminal law in whatever is done in the exercise or purported exercise, or in the performance or purported performance of any function of that office.

It is important for senators to take a moment to reflect on what this is actually saying. This would be an immunity subsection. It would grant extensive immunity to the Senate ethics officer and anyone acting or purporting to act under his or her direction.

The proposed section states:

> No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

Let us take a moment, honourable senators, to consider the full significance of this proposed provision by analysing its component parts. The first part states that there be no civil or criminal proceedings taken against the ethics officer. In my view, this is the most extreme version of a public authority immunity provision that one could possibly imagine. First, it protects the ethics officer from civil liability.

Why is it important that we consider whether this would be a wise provision? How do honourable senators assure themselves that the information that they will be required to divulge to the Senate ethics officer will remain confidential? How are senators to have any recourse if this ethics officer slanders or otherwise defames the character of any particular senator in public?

Slander or defamation, honourable senators, is seldom done in bad faith. They are often done with the mistaken view that the statements being made are accurate. What are senators to do with a Senate ethics officer who makes statements in good faith that are inaccurate and defamatory?

• (1520)

If the ethics officer or any person acting under his or her direction maligns you, your spouse or your family; libels you, slanders you or impugns your integrity in public and, subsequently, finds that he or she was wrong, you have absolutely no civil recourse against this individual if he or she acted in good faith. You cannot sue them; you cannot fire them. At best, you may get, "Oops, I am sorry"; at worst, "I was only doing my job." That is cold comfort after you or your family's good name and reputation have been besmirched and sullied in the public eye.

This legislation does not see fit to allow senators to have recourse against the Senate ethics officer for defamation, libel or malicious prosecution. While this is bad enough, honourable senators, it is not the most egregious part of this clause. It is the first part of proposed section 20.6(2), which extends the immunity of the ethics officer to cover criminal acts that I find most disturbing. I believe honourable senators should think long and hard before they agree that it is right to give an officer of Parliament immunity from committing criminal acts. This proposed section will put not only this person but also those in his or her employ above the rule of law.

The police do not have the right to commit criminal acts. Section 25 of the Criminal Code, which protects police officers in the performance of their duties, does not give them immunity from engaging in criminal activity. Section 25 states in part as follows:

> Every one who is required or authorized by law to do anything in the administration or enforcement of the law, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Any honourable senator familiar with the limited scope of the immunity of police officers knows that it does not matter that police officers act in good faith. If they commit a criminal offence, they are liable. There is no criminal immunity for police officers.

Should this section matter to us, honourable senators, beyond the academic point that we are immunizing an officer of Parliament and his or her employees from prosecution for criminal acts? Honourable senators might consider whether, acting in good faith, the ethics officer or an employee might see fit to trespass into the offices of senators. Might it ever occur that a Senate ethics officer, acting in good faith, sees fit to provide himself or herself with access to the computer files of a senator, either in the Senate or from the off-Parliament office or home of a senator? I am less concerned with the likelihood that this may happen than I am with the utter impropriety of having a quasi-judicial officer operating above the criminal law, trampling on the very rule of law.

There are so many ways in which this official will come into conflict with senators that I urge honourable senators to rethink the extraordinary degree of autonomy and immunity that is granted to this official by this particular clause of the bill.

I am not alone in thinking that it is improper to grant absolute immunity from criminal or civil wrongs to a person in authority, such as a prosecutor. In my view, regardless of the inoffensive name of the Senate ethics officer, the structure of this legislation makes this officer, on more than a few occasions, a prosecutor in every real sense of the word.

Prosecutors should not be immune from the law. That is what the Supreme Court of Canada said in *Proulx v. Attorney General (Quebec)*. I quote the following:

> 4. Under our criminal justice system, prosecutors are vested with extensive discretion and decision-making authority to carry out their functions. Given the importance of this role to the administration of justice, courts should be very slow indeed to second-guess a prosecutor's judgment calls when assessing Crown liability for prosecutorial misconduct. *Nelles v. Ontario*... affirmed unequivocally the public interest in setting the threshold for such liability very high, so as to deter all but the most serious claims against the prosecuting authorities, and to ensure that Crown liability is engaged in only the most exceptional circumstances. Against these vital considerations is the principle that the Ministry of the Attorney General and its...prosecutors are not above the law and must be held accountable. Individuals caught up in the justice system must be protected from abuses of power. In part, this accountability is achieved through the availability of a civil action for malicious prosecution. As stated by Lamer, J. (as he then was) in Nelles at p. 195:

> ...public confidence in the office of a public prosecutor suffers greatly when the person who is in a position of knowledge in respect of the constitutional and legal impact of his conduct is shielded from civil liability when he abuses the process through a malicious prosecution.

The next part of proposed section 20.6(2) extends criminal and civil immunity to any person acting on behalf of the Senate ethics officer. Although this chamber may go through the motions of consulting about the Prime Minister's appointment of the ethics officer of the Senate, it is not even that officer we need to concern ourselves with entirely. Any person acting on his behalf might do the things that we might worry about and then be immune from criminal or civil action. Even if the ethics officer is a retired judge or other well-respected person, this part of the bill extends the criminal and civil immunity to his or her hired staff.

If such staff pass on information to the media that is libellous or defamatory, senators have no recourse. If a staff member improperly acquires information or property of a senator in his or her good-faith exercise of what he or she sees as their duties, then there is no recourse, civilly or criminally, for that senator.

Some senators may have little concern about this bill. They may have few or no interests outside of the Senate. They may feel that they do not have any conflicts of interest. Nonetheless, is there anything that such senators feel should be beyond the scope or grasp of the ethics officer? Surely, senators cannot see this immunity, especially in this officer, as benign. Surely, for the very sake of this institution, we cannot be party to legislation that creates not an ethics officer but an ethics czar who is above the law.

The next part of this proposed section, 20.6(2), extends criminal and civil immunity beyond the acts actually done in the execution of a duty to acts that are purported to be done in the execution of a duty. I take this to mean that the immunity will cover cases where the person working in the office of the ethics officer merely asserts or purports that his or her act was in the performance of his or her duties. This will be sufficient to cloak the action with civil and criminal immunity. That suggests to me that the scope of acts done by the officer or his or her staff, immune from liability, will be as wide as humanly possible.

Honourable senators should not think that this is ordinary language that is put into many pieces of legislation protecting public officers. It is not.

I am not the first or only person to suggest that provisions such as this one are inimical to all of our legal traditions. Many people, from A.V. Dicey in his book, *The Law of the Constitution,* to the Supreme Court of Canada in the case of *Susan Nelles,* have said that absolute immunity is utterly unreasonable as a rule covering public functionaries.

In the *Susan Nelles* case heard before the Supreme Court of Canada, the court was considering whether it was possible for Susan Nelles, who alleged that she had been wrongly pursued by prosecution. The Attorney General of Ontario argued that they had absolute immunity. The Supreme Court did not even touch on whether prosecutors could escape criminal law because it was unreasonable, in its opinion, to immunize them from even the civil law. Justice Lamer, speaking for the court, said the following:

• (1530)

> Regard must also be had for the victim of the malicious prosecution. The fundamental flaw with an absolute immunity for prosecutors is that the wrongdoer cannot be held accountable by the victim through the legal process. As I have stated earlier, the plaintiff in a malicious prosecution suit bears a formidable burden of proof and in those cases where a case can be made out, the plaintiff's Charter rights may have been infringed as well. Granting an absolute immunity to prosecutors is akin to granting a licence to subvert individual rights. Not only does absolute immunity negate a private right of action, but in addition, it seems to me, it may be that it would effectively bar the seeking of a remedy pursuant to s. 24(1) of the Charter. It seems clear that in using his office to maliciously prosecute an accused, the prosecutor would be depriving an individual of the right to liberty and security of the person in a manner that does not accord with the principles of fundamental justice.

The Hon. the Speaker: Senator Furey, I regret to advise that your 15 minutes have expired.

Some Hon. Senators: More!

Senator Furey: I would ask for leave to continue.

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

Hon. Senators: Agreed.

Senator Furey: Justice Lamer continued:

> Such an individual would normally have the right under s. 24(1) of the Charter to apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just if he can establish that one of his Charter rights has been infringed. The question arises then, whether s. 24(1) of the Charter confers a right to an individual to seek a remedy from a competent court. In my view it does. When a person can demonstrate that one of his Charter rights has been infringed, access to a court of competent jurisdiction to seek a remedy is essential for the vindication of a constitutional wrong. To create a right without a remedy is antithetical to one of the purposes of the Charter, which surely is to allow courts to fashion remedies when constitutional infringements occur. Whether or not a common law or statutory law can constitutionally have the effect of excluding the courts from granting the just and appropriate remedy, their most meaningful function under the Charter, does not have to be decided in this appeal. It is, in any case, clear that such a result is undesirable and provides a compelling underlying reason for finding that the common law itself does not mandate absolute immunity.

Honourable senators supporting this bill have applauded how strictly the office of the ethics officer is protected against the courts. This insulation can and will be used against senators. This could not happen under a non-statutory regime, and now we will have the worst of both worlds. The ethics officer will be outside our control and outside the review of the court system.

Honourable senators, it does not have to be this way. The structure of Bill C-34 resembles legislation set up to create a prosecutor, with independence and blanket immunity from recourse from both criminal and civil actions. Such legislation is normally aimed at specific social evils such as crimes and breaches of securities. The instruments are constructed to address the magnitude of the evil.

Is this what the Senate of Canada is? Is this what senators are? No prosecutors or police officers in the country enjoy the immunity from criminal proceedings that the drafters of this bill chose to aim directly at the heart of this chamber. The magnitude of the issue of section 20.6(2) is, in my opinion, beyond the quarrelling about whether courts will or will not intervene, beyond quarrelling about privileges, and beyond quarrelling about the appointment process. This inimical provision is conducive to great mischief, great fear and great harm, and it should bring about the delay of this bill, at least until this offensive proposed subsection is removed.

I thank honourable senators for their attention.

Some Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Will the honourable senator allow a question?

Senator Furey: Yes.

Senator Lynch-Staunton: First, I commend the honourable senator for having drawn this to the attention of all honourable senators, in particular those who, like all of us, favour the principle of the bill but realize that there are major flaws in it which must be corrected before it can be allowed to become law. I would hope that, if Senator Furey or someone else has not already prepared an amendment along these lines, we will make every effort to see that one is tabled, perhaps even today. Meanwhile, I would point out that not only are these extraordinary powers granted to the ethics counsellor, but they also will be granted to the ethics commissioner. Both would have the same extraordinary immunity.

Could the honourable senator explain to me, and to others who are not familiar with it, the term "good faith"? What does it mean? Is it enough for someone to say, "Well, I didn't mean it," or, "I'm sorry, it was a mistake," or, "You're right, I shouldn't have left that document on my desk. I didn't mean to do that"? Is that what good faith is all about? Is that the escape hatch for a commissioner or counsellor who may deliberately want information to be leaked? Can he cover his tracks by pleading good faith, or is there more substance to it than that?

Senator Furey: I thank the honourable senator for his question. There is some substance and very little comfort in the phrase that circumscribes the behaviour called "good faith." It is a very low threshold and it is generally tied to motive. If an individual, an overzealous employee of the ethics commissioner, for example, is performing his duties, that is, investigating a senator after a complaint has been made, and he chooses, because of his knowledge of computers, to hack into a senator's computer at home or work and retrieve information for which he would normally require a search warrant, he is immune from civil and criminal liability for those acts because he is acting in what he considers to be the course of his duty and acting in good faith.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would ask the honourable senator if he has exactly the same concerns about the fact that the immunity provision in this bill for our officer is exactly the same immunity provided for the Information Commissioner and the Privacy Commissioner?

Senator Furey: Honourable senators, I have exactly the same concerns. This is an abhorrent provision to put into any legislation. A society that purports to be democratic and live by the rule of law should not be putting anyone above the rule of law — not an information commissioner, not a privacy commissioner, not an ethics commissioner, not any commissioner.

Some Hon. Senators: Hear, hear!

Hon. Joan Fraser: Honourable senators, I of course appreciate Senator Furey's dedication to my principles, but I am completely puzzled about where he finds this assumption that the Senate ethics officer can run riot and invade every aspect of our lives. The Senate ethics officer can do nothing except twiddle his or her thumbs unless we in the Senate have told him or her to do something. The job description, the duties and the responsibilities will all be determined by us.

Senator Furey: With the greatest respect to the honourable senator, I will not respond to that because I feel she may have missed the point of this whole proposed piece of framework legislation and what it is intended to do.

Senator Fraser: I beg the honourable senator's pardon. I spent the better part of a year studying this subject, and I attended many meetings with many learned witnesses discussing it. In my view, it does exactly what I said it does.

The Hon. the Speaker: It is Senator Furey's time, and it is his choice as to whether to take questions or comments. He is indicating that he will take no further questions or comments.

Senator Kroft: No further questions?

The Hon. the Speaker: It is Senator Furey's choice.

Hon. Richard H. Kroft: Honourable senators, I thank Senator Furey for his speech. I think we will no doubt revisit that subject matter, because it is enormously concerning to me and, I know, to many others in this chamber. I would like to go back to 20,000 feet, as they say, and look at our institution in a broader way and, indeed, in a more personal way.

Over this past weekend, I reread a speech I gave in this chamber on June 20, 2000. The subject of the speech was Bill C-20, better known as the "clarity bill." I went back to that speech because it dealt with a difficult personal struggle between my desire to support an important piece of government legislation and my concern over the damage that that bill might do to the Senate as an institution.

• (1540)

The clarity bill was a personal challenge because I felt strongly about the historic importance of its substance for Canada. At the same time, there could be no dispute that it did some damage to the Senate. After much soul-searching I supported the bill and urged other honourable senators to do so.

As I reviewed the clarity bill debate and my personal struggle, it became strikingly obvious to me how different that situation is from the current one concerning Bill C-34. None of the challenges of Bill C-20 are present. What we again have, in my view, is a serious diminution of the Senate. Indeed, in my view, we have a diminution much more serious and far-reaching than that in the clarity bill. This time, however, there is no bargain. There is no trade-off or balancing of priorities. There is no important national purpose that we would have to frustrate in our defence of the Senate.

In saying this, I am not minimizing the importance of a code of conduct and a clearly established procedure in the Senate, indeed not. This we will do. Now, with Bill C-34, there is simply no other program or cause that we have to sacrifice to accomplish that. Here we have what is only an institutional bill. It is only about the Senate, nothing more.

I say that while recognizing that the bill is also about the House of Commons. I have no quarrel with that part of the bill. It is not our business. Neither, however, is the Senate their business, nor is it the business of the executive branch, the Governor in Council. It is the Senate's business, pure and simple. It is all about our duty to the institution of the Senate, ourselves as senators, and all of those who will follow us. We alone will be accountable to the people of Canada for what we do in this institution, just as we alone are accountable for our conduct individually and institutionally.

Let no one believe that the legal and operating structure that we live by will determine Canadians' view of the Senate. As is true in all human affairs, we will be judged by what we do, day in and day out, year in and year out. Let us not allow the spectre of short-term negative media to distort our vision. It is our duty to do what is right as we see it.

Honourable senators, in the effort to understand the nature of this issue, and its specific and narrow institutional focus, nothing could be more helpful than to study the British experience. I do not intend to go through all of that in any detail again. It is well known to most in this chamber, or can quickly be to those who do not know. It is so helpful because it is so clear. It is so contemporary and so relevant. Not only that, we had the benefit of direct and thorough discussion with the principal players who created that situation. We have had the opportunity of personal interchange with them to test the validity of our thinking and, through in-depth questioning, to understand their reasoning and their experience.

What is the Westminster model? To put it simply and clearly, it is about a workable, functioning code of conduct and its administration for the House of Lords, operating with complete independence. How closely our code and practice would resemble theirs is not the issue. We will do what we feel we should, but the principles on which it operates are very persuasive.

One of these principles, and one that is of fundamental importance, is the recognition that we are not the same as the House of Commons. One of the most important differences is that theirs is a house of confidence and ours is not. Whatever position they are in vis-à-vis the executive branch is constitutionally under their control. We have no such relationship and no such power. What our Fathers of Confederation gave the Senate in its place, however, is independence by virtue of two things: appointment and length of term.

Uninformed critics often allege that because we are appointed by a Prime Minister we are lackeys, bound to his will. The truth, of course, lies in the exact opposite direction. Once appointed, we are absolutely free to exercise our conscience — indeed as any judge does who is appointed by the very same process.

For us to accept incursions upon our independence is to compromise one of the most important tools that the Constitution gives us to play our role. Honourable senators, this is not an obscure academic point. It is a fundamental power at the root of our existence as an institution and one we do not have the right to squander for whatever reason.

What is all this talk about independence and power? Why do we value it so highly? We value it highly because it is what we are all about. Power and independence are what allow us to review and amend legislation and, in the rarest of cases, reject it. Power and independence are about carrying out in-depth studies on important policy issues in our committees, with the ability to call ministers and officials to account for their action or inaction. Power and independence are about being the only check on the unlimited capacity of an executive branch, especially with a majority government, to do whatever it wants. Just think what a futile and meaningless place this would be if we did not have the power and independence to do those things that we take for granted every day, and in which we take such pride.

Let me now address the matter of care and attention to our work on this bill. What about careful study for this, the chamber of sober second thought; for this, the chamber justly known for careful and considered study of difficult and complex issues? How do we feel about the time we have taken on the difficult issues involved? I will tell you how I feel, honourable senators. For one, I know that the legislation has come to us with relatively modest study on the other side. Any careful review of proceedings in the other place reveals that what study there was focussed mainly on future rules, issues that are not even part of this bill, and not for the most part on serious constitutional questions.

Even more important is that they quite properly gave absolutely no consideration to the part of the bill regarding the Senate. That is our job, and I hope that we will be allowed to do it. The Senate portion of the bill is now receiving sober first thought. The arguments proclaiming the great amount of time we have had for substantial debate are facetious, at best.

What have we had? We have had a pre-emptive debate on a bill we did not yet have. We have had a committee produce an interim report while admitting that it could not reach consensus on the most important issues regarding this legislation: that is, those issues that are elements of the independence of the Senate. From that interim report came, we are told, the agreement by the government to give the Senate its own ethics officer. We are being told we should be very happy because we got what we asked for.

Honourable senators, this is bizarre. The interim report only went so far as to set out the separate positions for the Commons and the Senate because that is all the committee could agree upon at that incomplete stage of its work. There was no consensus as to the method of appointment of the Senate ethics officer. Yet we are being told to cheer because the bill has given us what we wanted. Thus, to say the interim report was valuable as guidance to the government is hollow indeed. In fact, what it did is it gave the government an invitation to draft Bill C-34 in a way that exploited the incompleteness of the work of the Senate and its committee.

We thus have a bill that represents, on the most fundamental point, the uncompleted thinking of less than a majority of a committee with no knowledge of the beliefs of the Senate. We do not know the feelings of the Senate because the Senate has never been asked, either by resolution in the chamber or when asked to approve a report that is not a report. Honourable senators, we now have that chance. We have been asked.

Honourable senators, we have been told again and again, in speeches and in writing, that the government initiative on ethics is modeled — I think the government even used the word "inspired" — on the highly regarded but never approved Milliken-Oliver report. Perhaps the most fundamental principle of that report is that the Senate should have complete independence in these matters, beginning with the most basic issue of all, the appointment of its own Senate ethics officer. What do we have? We have an abandonment of that core principle. No lesser authority than the co-author of that report himself, Senator Oliver, has explained this to us with force and clarity.

Further on the matter of appointment, I am impressed by the legal interpretation that a legislated position puts at risk the sanctity of the privileges of this chamber. I personally believe the risk is high and that the jurisprudence makes that clear. While I recognize that there is a range of legal opinion on the nature and extent of that risk, I ask why, whether the risk is 100 per cent or 5 per cent, we would take any risk at all. For what purpose?

• (1550)

I cannot emphasize enough that the reach of the courts into our privileges is not even the most basic issue. The basic issue for me, as I have said, is the principle that we must be clearly and completely independent and in total control of our own rules, procedures and officials. That means basing all we do in our own rules — period, full stop. It is not complicated.

Of those who say that taking an independent course would expose the Senate to public criticism and ridicule, I ask what the Senate is all about if not independence to fill our constitutional role. Do we really believe the Canadian people will ultimately judge us on the technicalities of legal structure rather than on our actual conduct? As for the comparison with provinces, does any honourable senator believe that one in 100 people in any province knows if their legislature has such legislation and how it works? I think we all know the answer to that. People care about the results, and rightly so.

Comments that this debate and alleged delay is about senators wanting to protect their personal interests are rooted in misunderstandings of the most fundamental sort. It is obvious to everyone who reads the bill that there is absolutely nothing in it about rules on conflict, disclosure or anything of the sort — nothing at all. In many ways, we are already years ahead of this legislation in our existing rules, and what we do not have we can add as we deem necessary. All we are talking about now is the legal structure under which any new rules, procedure or positions will be created.

Honourable senators, by now it will be quite clear to you that I feel strongly about the matters before us. Let me close by explaining where I believe we now stand on this issue. We all know that we will be dealing with these matters again, and I believe we all favour doing so in the right way in the very near future. I certainly do. We are ready to do so and the next Prime Minister has put Parliament high on his program. However, it will not happen overnight, not if it is to be done properly. We have an enormous amount of work to do. This work must engage the Senate as a whole in the process of developing new rules and methodologies to meet the needs and constitutional independence of this institution and of Canadians.

We have not yet begun that work. We have not determined what sort of person working in what sort of structure we may want to operate within these rules when we have created them.

Honourable senators, I urge you not to get caught up in pressing an agenda that is not attentive to the essential interests of this institution that we are sworn to serve. Let us place responsibility for the Senate where it belongs — in our hands. Let us stand for the Senate and for the proper place of the Senate in the Constitution of Canada. Let us take the time and fulsome consideration it requires to deal with these matters as they should be dealt with.

Honourable senators, the most important thing I can possibly say to you at this time is this: If the Senate is ever to become irrelevant in Canada, it will not be because of some cataclysmic event; it will be because each time another issue arises that will erode the power and effectiveness of the Senate in some small or not so small way, senators will find it easier, more comfortable, to accept that erosion than to face up to the concerns about the media, the pressure of politics, or a misplaced view of loyalty and responsibility.

In my time here, I have seen these cases arise all too often. Sometimes we have the will and ability to fend off the threat and sometimes not. What I do know beyond a shadow of a doubt is that failure to exercise constant vigilance and personal courage will leave the Senate slowly but steadily weakened. I do not want that to be my legacy to this place.

The Hon. the Speaker: I regret to advise that Senator Kroft's time has expired, although there may be questions.

Do you wish to request additional time, Senator Kroft?

Senator Kroft: Yes.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

Senator Carstairs: Honourable senators, I thank the honourable senator for his remarks. However, I find a certain inconsistency in them. He has spent a considerable amount of time on the issue of the independence of the Senate. That is something about which members of the committee also spoke when they said that the Senate ethics officer must be entirely separate from the House of Commons and the public officer ethics counsellor. He has also praised the Milliken-Oliver report and seems to believe that everything in that report should have become the nature of this legislation. However, the Milliken-Oliver report calls for one officer of Parliament; it calls for a jurisconsult to represent both the Senate and the House of Commons.

On page 3 of that report, it states that a parliamentary officer known as the jurisconsult would be appointed jointly by the Senate and the House of Commons and that this individual would be responsible for receiving disclosure from parliamentarians.

I find a certain inconsistency there, and I would like the honourable senator to address that.

Senator Kroft: I thank the honourable senator for her question and I have absolutely no difficulty responding to it. Unfortunately, it requires me to dispute the fundamental premise of her question because she said something that I did not say anywhere in the course of my speech. I did not say anywhere in my remarks, by implication or directly, that I had accepted everything in the Milliken-Oliver report. I referred to one aspect of that report, which I defined as a core principle, and that core principle was the power of appointment of the ethics official, officer, or jurisconsult as they call it. I very carefully did not go beyond that and my point did not require me to do so. It was the one core principle and I made no suggestion of anything else. In fact, I do not accept everything inherent in the Milliken-Oliver report, and I rather resent, frankly, the suggestion that I made any such statement.

Senator Fraser: Honourable senators, I hope that I did not mishear Senator Kroft as he made his many points. I thought I heard him observe, in tones that I interpreted as being critical in the sense that he seemed to be suggesting that this was a flaw in the bill, that there was no code in the bill, no reference to the rules.

I flipped back to the famous interim report and see on page 3, under subparagraphs 3(c), (g) and (i), sections to which every member of that committee agreed. The honourable senator is quite right that there were points upon which the committee did not reach agreement, but these were points upon which the committee did absolutely agree. They say precisely that the duties and functions of the ethics officer and the rules of conduct shall not be in statute but in the *Rules of the Senate*.

How could we complain, then, if they are not in statute? Should we not be pleased that, as we said, they should not be in statute? They have been taken out of the statute and they remain for us to define, which is what we said we should do.

Have I missed the point?

Senator Kroft: When the honourable senator has the opportunity to read my remarks, which I am sure will be accurately reported, as they usually are, she will see that with regard to the rules I said that some say — and I have heard it said widely and too often — that if we vote down this bill, we will be voting down a code of conduct. What I said was that this bill does not contain a code of conduct.

• (1600)

I am familiar with the report and all of the extensive discussions that took place and, more importantly, I understand what may lie ahead. If some senators were to oppose this bill, that is, vote against it or ask that it be referred back to committee for further study, they could not be said to be stepping on any rules or a code of conduct because there is nothing in there. Unfortunately, I have come to understand what an incredible educational challenge this process is, because, as soon as somebody sits down and makes that very clear, somebody else will stand up and ask, "How can you vote against a set of rules or a code of conduct?" That concept has, somehow, been engrained in this debate, and I think the media has had some role in that.

We can vote against this without voting against a single rule. We need not express a view on disclosure, on conflict or anything else. That was my point and nothing more.

Senator Fraser: Honourable senators, I withdraw my question. I hope to speak later and then senators may ask me some questions.

Hon. Lorna Milne: Honourable senators, I am sure that it comes as no surprise to anyone at all that I rise this afternoon to speak in support of Bill C-34, to amend the Parliament of Canada Act.

During my time in the Senate, there are few bills that I have supported more strongly — and not from any misplaced view of loyalty. I passionately believe that the time has come for Bill C-34 to pass and for the Senate to establish a strong and rigorous conflict of interest regime that reflects both the best interests of senators and the increasing demands from the public for transparency and accountability in government.

We are a privileged group, we senators, and I mean that in every sense of the word. We have the right to assemble and make pronouncements on the greatest issues that face our country, while passing laws in the best democracy in the world. By virtue of our position, we have the privilege to discipline ourselves and to organize our own affairs. These privileges exist; they are real; and they will never be taken away by anyone. Our ancestors fought for them, first, in England, and then again in Upper and Lower Canada. They exist and are recognized by the courts, and they have always been recognized by the courts.

However, with those privileges come responsibilities and the demands of our service to the Canadian public. The citizens of this country expect that we will measure up to the highest ethical standards and that we will always act in the best interests of our country, not in our own interests. Bill C-34 creates the framework for a new, improved and transparent ethics regime that will meet the needs of both senators and the Canadian public.

There are two critical points that I will advance in my speech this afternoon. First, since we are not elected members of Parliament, I believe that we should be held to a higher and more transparent standard than our colleagues in the other place, and that our awareness be even more finely attuned to nuances about the conduct of our members.

Second, when looking at the specifics of this bill, honourable senators must understand what it is we will be voting on. This bill merely sets up a framework where nothing more than advice is ever given. Decisions on propriety of conduct will remain entirely within the walls of this chamber and in the hands of senators themselves.

For nearly nine months now, our Standing Committee on Rules, Procedure and the Rights of Parliament has been studying the ethics package that the Prime Minister presented to us. Witnesses have come from across the country to tell us that a statute-based ethics regime has worked for the provinces and will work to significantly improve the public's opinion of honourable senators and the work that we do here.

One witness who raised quite a stir with her testimony was University of Guelph Vice-President Academic, Maureen Mancuso. Professor Mancuso had published a study on the wide-ranging opinions of Canadians on the ethics of MPs, senators, the press and others. In her opinion, Canadians shared a deep mistrust of politicians that did not seem to be going away. She contended that senators in particular had a high disapproval rating and that, if we were lucky, only 40 per cent of Canadians had a positive impression of the ethical standards of senators.

All of us in this place have been working diligently to improve that. We might quibble with the numbers that Professor Mancuso gave us. I do not think the numbers are as bad as she said they are. I do not think Canadians have as negative an impression of the Senate as she said but, if we were being totally honest, could any of us say that she got the general impression wrong? Is it not true, honourable senators, that for many years we have been battling the perception — certainly, ever since I came into this place — that we are living high on the hog and that, as a result, the legitimacy of our institution has been called into question from all sides of the political spectrum?

I suggest to all of you that the public is doing its job by challenging the legitimacy and the conduct of its Parliament. That is the exact role of the public in a modern democracy. In my opinion, it is up to us to give Canadians a positive and strong reason to change their minds about the honesty and integrity of parliamentarians. I believe that the establishment of an ethics officer for the Senate would go a long way to doing exactly that.

I repeat, honourable senators: Because we are not elected members of Parliament, we should be held to a higher and more transparent standard than our colleagues in the other place. The House of Commons is governed by the basic principle that, if the electors of a riding no longer have faith in their MP, they can turf

them out at the next election. That is not the case with senators. Our relationship with Canadians is a bit like a marriage. By and large, Canadians are stuck with us, for better or for worse, until the age of 75, when we divorce. If we want to enjoy the benefits of our secure length of tenure, along with it, I believe, goes a responsibility to be open, honest and transparent in all matters that could even tangentially affect the work that we do here.

One may ask, then: What are the minimum requirements of the open and rigorous regime that I have been talking about? In my opinion, it demands that the structure itself, but not the specific code or rules, be entrenched in statute. There are two reasons for this. First, a statute is difficult to amend. A bill for that purpose would require three readings and committee study in each house of Parliament. The media is finely attuned to the progress of bills and, as such, attempted changes could never escape public scrutiny. If the regime were placed in the rules, it could be changed or even deleted on 24 hours' notice by one vote of 50 per cent plus one of our members present, for example, perhaps on a Thursday in June. That kind of flexibility, in my opinion, does not serve the public well.

Second, statutes are widely circulated and are easily accessible to all Canadians. You can find them at any library in the country. I must tell honourable senators that I do not know of many, if any, libraries that carry the *Rules of the Senate of Canada*. Canadians have a right to know, I believe, about the regime that governs MPs and senators. There can be no more public declaration of a system than to place its structure in a statute.

All of this is not to say, honourable senators, that everything about the new regime should be put into the body of the statute. I have consistently argued that this should not, in fact, be the case. Senator Joyal and Senator Grafstein have effectively argued for the necessity of maintaining the constitutional separation between the various branches of government. I strongly agree with that view. Where we differ fundamentally, perhaps, certainly with Senator Kroft, is on the question of whether or not this particular structure effectively respects that separation. I believe that it does.

• (1610)

Let us be clear on what we are voting on in Bill C-34. This bill does nothing more than create the position of Senate ethics officer. It does so in the same manner as a statute creates the position of the Clerk of the Senate. There are no rules of conduct or potential rules of conduct contained in Bill C-34. If this bill is passed, the job of the Senate ethics officer will be to take orders from the Senate — from the Senate — in order to provide advice on the administration and enforcement of rules of conduct and conflict of interest that already exist within the *Rules of the Senate*. We have those rules today, not only within our rules but sporadically throughout the Parliament of Canada Act and in the Criminal Code. If this position is established, it will take a further step, a resolution of this place, before we change any of the rules of conduct in this place.

As an aside, I should note that I support the discussion that has already begun within the Rules Committee to draft a new code of conduct comprehensively setting out a new and modern conflict of interest scheme, partially based on the House of Commons' proposed code, on the models contained in most provinces, and on our present rules. However, I point out that this code could only come into effect after full discussion by all senators and adoption by the Senate. Such a code would provide that senators would privately disclose their assets to the Senate ethics officer and be bound by provisions designed to keep the senators' public business from conflicting with her or his declared private interests.

That is all for the future. That is not what we are talking about today. All we are doing today is creating the position of Senate ethics officer, there for the whole world to see.

The method of appointment of a Senate ethics officer has been one of the issues raised many times by opponents of this bill. There are concerns that, under the appointment provisions contained in the bill as drafted, there will not be a sufficiently high degree of consensus in the appointment to generate the level of trust required to install a really top-notch Senate ethics officer that we all can trust and relate to. With the greatest of respect, I disagree with that analysis.

I would refer honourable senators to the comments that I made at second reading in my speech. I will not repeat them at length, you will be glad to know, but I want to stress the fact that there is more consultation called for in this bill than in any of the provincial statutes where ethics officers are appointed. In Alberta, for example, there is not even a vote of the chamber required to generate an appointment. Yet, all of the other provinces report that they have a high degree of confidence in their respective ethics counsellors.

Since I completed my second reading speech, I looked into the appointment of the Auditor General, who was mentioned here the other day. That person is appointed by the Governor in Council and invariably has the support of members of the other side. I was quite surprised to note that, even though this person is an officer of Parliament, appointed by Governor in Council, not one shred of consultation with parliamentarians is required to appoint her to the position.

Under section 3 of the Auditor General Act, the Governor in Council has the power to make an appointment of an Auditor General. No consultation is required, nor is any vote. Yet, for decades, parliamentarians of all stripes have always held our Auditor Generals in high esteem. I suggest to honourable senators that the concerns about the manner of appointment of the Senate ethics officer are not well founded in the very real history of Canadian officers of Parliament.

Getting back, then, to the limited things that Bill C-34 does do, I want to look at the duties that are assigned to the Senate ethics officer. For clarity, I will quote them specifically from the bill. Proposed subsection 20.5(1) states:

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

Proposed subsection 20.5(2) states:

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

The proposed subsection 20.5(3) states:

> The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

Please note that absolutely no decision-making power is given to this officer. She or he does not have the power to subpoena documents. The officer does not have the power to sign a search warrant, nor the power to summon witnesses or hold hearings. The Senate ethics officer will only have such powers as are given to this person by the Senate.

Some have argued that this bill gives all kinds of powers away and that this should concern honourable senators. That simply is not the case. Some have also argued that, if you let a Senate ethics officer make any decisions, the courts will jump in and interfere in our business. However, the Senate ethics officer makes no decisions. All decisions will be made by the Senate and the Senate alone.

Given all of the foregoing, honourable senators, I believe that this bill adequately protects our privileges. All of the decision making resides within the Senate itself and its committees. The work of the Senate ethics officer is deemed to be privileged. That person does not have the power to do anything unless such power is specifically granted to him or her by the Senate. I believe that all steps possible have been taken to ensure that the privileges of this chamber are protected in the creation of this position.

Honourable senators, this is a very good bill. I could not support it more strongly. It gives the public the surety and transparency that only a statute can allow, while clearly maintaining the control within this institution.

Honourable senators, I think the time has come. Parliaments of Canada have been studying this matter for almost 30 years, without bringing the issue to a head.

[Senator Milne]

The Hon. the Speaker: Senator Milne, I regret to advise that your 15 minutes have expired.

Senator Milne: I would seek leave to continue.

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

Hon. Senators: Agreed.

Senator Milne: Honourable senators, we need to move to put into place a rigorous, modern, well-structured system before Canadians lose any more confidence in our institution. I urge all of you to pass this bill as soon as possible.

Hon. Jerahmiel S. Grafstein: I have one question on the report.

Senator Milne: One question, that is all. I do not wish to take the time of the Senate.

Senator Grafstein: I would ask the honourable senator to refer to a report of the committee that the honourable senator chairs, entitled "Government Ethics Initiative," an interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament, dated April 2003. The report concluded unanimously — I should not say the report concluded — that for those who believe there should be an officer established in statute, which I understand is a position with which the honourable senator agrees:

> ...it is unacceptable for the Governor in Council to appoint the ethics officer in the manner proposed by the draft bill. There must be agreement of the leaders of the recognized parties in the Senate, followed by a confirming resolution of the Senate itself. Only in this manner can the incoming ethics officer be assured that he or she has Senators' respect and support.

This was a report of the committee that the honourable senator chaired. She has now come to a different conclusion. Would the honourable senator explain the difference between her conclusion then and her conclusion now?

• (1620)

Senator Milne: The bill states quite clearly:

> **20.1** The Governor in Council shall, by commission under the Great Seal appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of that appointment by resolution of the Senate.

I do not believe for one single second that the government would attempt to impose any ethics officer on this place who was not acceptable on both sides of this chamber.

Hon. Elizabeth Hubley: Honourable senators, I rise to speak in support of Bill C-34 today. I believe the proposed legislation represents an important and necessary step for the Senate, enabling as it does the crafting and establishing of a new code of conduct for all its members.

I realize that some honourable senators have difficulty supporting this bill in its present form. Some fear the undue involvement of the executive branch of government in the affairs of an independent Senate. There are also senators who believe that matters dealt with under the proposed statute may be reviewed by the courts. Others question the very propriety of disclosing private business and financial information.

However, there is, in my view, an even greater issue before us as we consider the merits of Bill C-34. It is our response to the growing demand of Canadians for accountability and transparency in the work of government, and for a more stringent and effective code of behaviour for all parliamentarians. While clinging to first principles, and our sense of legal and constitutional rightness, we must be careful not to offend the rights of the citizens we serve. Indeed, as appointed parliamentarians not required to seek the approval of the people through free election, we have an even greater responsibility, I believe, to be stringent about how we conduct our affairs.

It is a difficult balance, I know, but if we are to err, then I would rather err on the side of impartiality and accountability than to establish and enforce a code of ethics here in the Senate that is entirely self-contained and, therefore, open to the charge that it is also self-interested.

To say that we are absolute masters of our own ship is simply not enough at this juncture in our history, when all public officials and parliamentarians increasingly are being put under the microscope. By subjecting ourselves to greater scrutiny, honourable senators, we are not implicitly admitting guilt or wrongdoing in any way, nor suggesting that we have anything to hide from the Canadian people. On the contrary, the Senate of Canada is a noble and trustworthy institution. I am proud to serve here together with so many distinguished colleagues of high character and integrity. It is for this very reason that I believe we should exhibit leadership when it comes to the issue of conduct.

Here in the Senate, our unique role and independence is our most defining characteristic, but it is also, perhaps, our greatest vulnerability. Bill C-34 represents a timely opportunity to demonstrate to the Canadian people that the Senate of Canada functions according to the highest principles and standards, and that, as senators, we are willing to subject ourselves to review.

Susan Riley, writing recently in the *Ottawa Citizen*, referred to the Senate as the "chamber of sober self-interest." "Our friends in the Senate" she said, "are up to their old tricks, defending the comfortable and privileged, and, of course, their cherished independence, from the grubby intrusions of democracy..." Honourable senators, we can choose to dismiss Ms. Riley's comments and accuse her of misunderstanding the Senate and its role. However, I regret that she does reflect the views of many Canadians, and we should not let this reality escape us.

The Senate is a unique institution possessing its own separate parliamentary power and authority, but we cannot, and should not, live outside the court of public opinion.

We need Bill C-34. It is not perfect, but then, who or what is perfect?

Appointing and mandating the ethics officer by statute, while giving the Senate the exclusive authority to determine the code itself, strikes me as a good balance. Clause 20.1 requires the government to "consult with the leader of every recognized party in the Senate..." prior to the appointment of this parliamentary officer. The Senate must then approve the appointment by resolution. Clearly, if a proposed ethics officer was deemed unacceptable by one or more parties, or by a group of senators, that person would not enjoy the confidence of this institution, and it would be impossible for him or her to perform their duties.

In these circumstances, honourable senators, I am sure that any Prime Minister would find another candidate for the job, rather than force the matter politically and use the governing party's majority in the Senate to win approval. On the appointment of such an important officer of Parliament, I simply do not believe that any government could afford to be so blindly partisan.

Honourable senators, I am willing to trust in the goodwill of this and subsequent governments when it comes to recruiting and appointing the Senate ethics officer, just as I am prepared to accept Bill C-34 with, we know, its imperfections and some ambiguities. To do otherwise, I believe, would be to proclaim an undeserved independence and arrogance, and to further distance ourselves from the citizens of this great country.

Hon. John G. Bryden: Honourable senators, I would like to talk with you today about our system of parliamentary democracy and our system of government, which was carefully crafted by the Fathers of Confederation and has served us so well for over 136 years, and the Senate's place in that system.

I will also try to explain why the statutory right to have the executive appoint an ethics commissioner or officer within the Senate may lead to very fundamental threats to the autonomy and independence of our institution.

Maybe we all know, but many people in Canada perhaps once knew but forgot, that there would be no Canada if there were not a Senate.

Some Hon. Senators: Hear, hear!

Senator Bryden: The fact is that when the Fathers of Confederation met to try to form a nation, it could not be done. New Brunswick — the province that I come from — and Nova Scotia were not prepared to join a country in which, from the opening gun, Upper and Lower Canada — which had the population — would always rule the nation.

• (1630)

The founders of our country, in the Constitution, created a bicameral Parliament in which they made provision for appointed representatives of the regions of Canada in equal number. Senators were to represent the interests of, at that time, the three regions. I do not want to quote a list of numbers, but there were to be 24 senators from the Maritimes, 24 senators from Quebec and 24 senators from Ontario.

There was to be always an independent and autonomous house of Parliament to bring forward the interests of the less populous parts of our country. We need only look at our previous Parliaments where the representation from Ontario has been overwhelming in government, to understand the need for this house. The representation from certain regions of our country had been sadly lacking. Indeed, in one situation there were no MPs from Nova Scotia, our neighbouring province.

The system that was put in place, while it was difficult to attain, is a marvel because of its simplicity. Our system of democratic government and parliamentary democracy in this country consists of three basic parts. The Crown, in our parlance now, is the executive. The Senate has the charge of reviewing every amendment to legislation that is passed by the lower House, often amending it and, more often than people realize, returning it or vetoing it. Sometimes that is done in the interests of our regions and sometimes for good basic policy reasons.

Each of the functions of Parliament — the executive, the House of Commons and the Senate — operate distinctly and separately from each other. The Crown, the executive, is responsible to and accountable to Parliament, to both the House of Commons and to the Senate. That is the way it was. Later on I will indicate that there has been some erosion of that.

In addition, back in 1867, long before the Charter of Rights and Freedoms, the Senate was particularly charged to look after the interests of minorities and not just the minorities that immediately spring to mind. If you read the literature, the charge was not just for religious minorities, language minorities, people of colour who might be in the minority, and Aboriginals, but also the disenfranchised, the poor, the people who had no one to speak for them. They decided that there should be an independent institution of our parliamentary democracy that could stand up and defend those interests without fear or favour from the executive or from anyone else.

Until now the Senate has been able to perform those functions very well. My life has been a very interesting journey. I started from the farm, went to Mount Allison University, 35 minutes away by car, but I was as scared as if I were going to New York. I had an interest in history and law. I got my law degree and went through the practice of law in the government of the province of New Brunswick. I was taught in law school about the Supreme Court and I was taught that the supreme legal authority in our democracy was Parliament.

I can remember so well the rules of interpretation. In trying to interpret a section in a statute, one of the rules was that you must look to see the mischief that the provision of the statute was designed to fix. It is interesting to note that the mischief was almost always a situation where the courts, in their interpretation of the law, had gone so far that they had in fact created a new law. That was not their business.

I do know my divisions of power. I know you have to be in the right place. However, if you add together the rights of the provincial legislatures, under the division of powers, and the rights of the Parliament of Canada, then you have all the bodies that control the right to affect all of the legal rights of the citizens of Canada.

That is the way it was. I know I am going a little too far, but I can remember using the illustration that, if you could get it into the right legislature, either Parliament or a provincial legislature, if that parliamentary body passed a law that said John Bryden shall not get out of bed on Tuesday morning, then John Bryden was prohibited from getting out of bed on Tuesday morning. At some time, that might have been a good law.

However, that process has been fundamentally changed. Since 1982, the Constitution Act and the Charter of Rights and Freedoms have changed all of that, resulting in many, many good things. That change has also created a situation where — to be categorical — much of the public policy of our nation is now made by the courts as they exercise what they see as their responsibility to administer and to interpret the Constitution and the Charter of Rights and Freedoms.

There is much blame to go around with this. Some of the blame is that the government, the executive that institutes the bills, has vacated the fields where it should be making the laws and has requested the Supreme Court to make judgments. Instead, difficult political issues, such as the abortion question or the definition of marriage, are left for the courts to deal with because the House of Commons and the members thereof do not need to carry those issues into their next elections, to be sort of crass in making those comments. It is government by judges, but with all due respect to them, it is by default. Somebody has to do it. The system has changed.

• (1640)

If one thinks about it, it is not a great deal dissimilar from the situation that exists with our neighbour to the south, where, in fact, the Supreme Court makes very significant policy decisions in interpreting the Constitution of the United States of America. At the same time that this was happening, from 1982 on — in fact, the last 25 years — an interesting thing has happened to the executive power in our system, beginning with Prime Minister Trudeau, continuing with Prime Minister Mulroney, with the present Prime Minister, and there is no real indication that it may not continue with the next Prime Minister. There has been an increasing centralization and concentration of the real executive power in one place, and that is a very expanded and powerful Prime Minister's Office.

Honourable senators, if one thinks about it, that, in itself, is closer to the system in the United States. We are about to choose a new leader. Perhaps my honourable colleagues on the other side will do the same thing soon. The point I want to make is that the system we used in the Liberal Party of Canada, for the first time ever, resembled very closely the primary system for choosing candidates for the President of the United States. That is to say, each member of the Liberal Party had a right to vote — not for a representative to go to a convention and vote for the leader who, because of circumstances, will be the Prime Minister — they had a right to vote to choose the Prime Minister. They had the right to individually vote for the candidates —

The Hon. the Speaker *pro tempore***:** I am sorry to interrupt the honourable senator, but his time has expired.

Is the honourable senator asking for leave to continue?

Senator Bryden: Yes, honourable senators.

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

Hon. Senators: Agreed.

Senator Bryden: Honourable senators will ask: What does that have to do with Bill C-34? An absolutely unbelievable change had occurred in our system in a very short period of time. In many ways, to use a polite term, our system is now a hybrid between the U.S. system and the British parliamentary system. In my opinion, these two fundamental changes, the increased powers of the courts to make public policy and the increased power of the executive and its concentration in the Prime Minister's Office, over the last 25 years, has sapped much of the independence of Parliament and its ability to hold the government responsible and accountable.

In my opinion, with respect to the statutory right of the executive, that is, the Prime Minister's Office, to appoint — I have read the act; there will be consultations et cetera — the bottom line is that that statutory right to appoint, reappoint, or discharge, and the only avenue of oversight of the officer of the Senate of Canada is the first major infringement of this type of executive power on the independence and the autonomy of this chamber. I fear that it has long-term implications for the proper functioning of this chamber and for our performance of our constitutional obligations.

With all due respect to those who say, "We must do this, or the *Hill Times*, the *National Post* and other media will say unflattering things about us," at this stage in my career and life, surely we must do the right thing for the continued independence and autonomy of this chamber rather than being stampeded by the concerns of this particular flavour of the month, which may be the basis of attack by the people and the media, who, if they did not have this aspect to attack, would find another area of this chamber to attack. They have been doing it for probably 135 of the 136 years of this chamber's existence.

We must try to do the right thing, not the expedient thing.

I would like to quote from Senator Pitfield, who in fact was here today, from a speech he made a number of years ago in Toronto:

> Focusing merely on the change and not on its consequences, as far as the eye can see is to invite mistakes and chaos.

In my nine years in this place, I have never voted against a government bill. There have been some government bills with which I have disagreed. The best example is Bill C-68 — not the whole bill but the part that deals with the registration of hunting rifles and shotguns. My position has been that I would fight issues like that in the minister's office on behalf of my region. I would fight it in our caucus. I would do everything that I possibly could do to ensure that my views were known, and the Minister of Justice at that time used to walk to the other side of the sidewalk if he saw me coming. I felt so strongly about this.

• (1650)

I live by one particular rule in dealing with conflicts in my own mind such as this. After having done the best I could in this process within our governing party, I would not substitute my judgment for the overwhelming collective judgment of other people who had considered the issue carefully and were prepared to go forward with it. The single exceptions are cases where the issue is personal principle and values, fundamental principles and values, or a fundamental threat to the institution that I am so proud to be a part of.

Honourable senators, I do not want to vote against my government this time either. For that reason, among the many others I have already given and could give, but many people have stated better than me, I wish to propose an amendment to the bill.

This amendment, I believe, meets the government's purpose of establishing an ethics officer for the Senate in this statute, on one hand, and the need to protect the autonomy of the Senate by reserving the appointment to the Senate itself in a way that protects the right of the respective parties in the Senate, on the other hand.

The amendment provides that the Senate shall appoint a Senate ethics officer. It is an obligation. The amendment clearly establishes the statutory obligation for the Senate to appoint an ethics officer. This is not a facilitating provision; it is an imperative provision in this amendment.

Further, the amendment would provide that the consent of the leaders of all of the recognized parties in the Senate is required; thus, the rights of the minorities are respected and the trust in the officer to be appointed is maintained.

MOTION IN AMENDMENT

Hon. John G. Bryden: Honourable senators, I move, seconded, by the Honourable Senator Sparrow:

> That Bill C-34 be not now read a third time but that it be amended,
>
> in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

20.1. The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11.

I thank honourable senators for their attention.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Do any honourable senators wish to speak to the motion in amendment?

Hon. Marcel Prud'homme: I have a simple question for Senator Bryden, honourable senators. Many items take place after consultation between recognized parties. You might remember that I almost led the fight on the floor, and that I was the one who stood up when Mr. Radwanski was appointed, because I had known of him for a long, long time. Eleven senators voted against his appointment. If it were not for someone having the guts to stand up — someone says "too much guts" — the motion would have been just accepted on division.

I do not disagree with consultation. I am not in a mood to speak passionately about how proud I am to be in the Senate, and it is not because a journalist could make me change my mind on the role of the Senate. I am not afraid of journalists. I can take them on.

Could the honourable senator not find a way whereby, ahead of time, all senators could be informed, and not just the two leaders? We have a growing number of people who may happen to know the individual who is selected. We now have Senators Roche, Plamondon, Lawson, Pitfield, St. Germain and myself. Who knows, there may eventually be more on this side. We are not to be consulted at all. I do not mean "consulted" as in being informed; I mean being made aware before the fact. I have always been concerned about that, particularly when it comes to the appointment of officers of this place.

Senator Bryden: The amendment deals with a guarantee that the recognized parties would be consulted. It is not, however, exclusionary of consultation with independent senators, of which there may be more or less. Indeed, there may be more than two recognized parties in this place at some time. There may be three or four.

You cannot put everything in an amendment, as I am sure the honourable senator knows. One of the overriding purposes of this approach is to have an ethics officer and an ethics regime that would be developed for that person to administer that is, out of the gate, something that every senator in the chamber can respect and is prepared to give an opportunity to function and function well. That can only be done, Honourable Senator Prud'homme, by ensuring that everyone is involved in the discussion.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise to speak against the motion in amendment put forward by the Honourable Senator Bryden. However, I must congratulate him for the cleanness of his motion, because it is absolutely transparent as to what it is he wants to do. He wants to take the entire bill and remove it, delete it, so that only the Senate of Canada could have any influence on the appointment of this individual, and only the Senate of Canada would respond to what I see as a cry from the Canadian people for accountability and transparency.

Honourable senators, I feel very strongly about the need for an ethics commissioner or officer for the Senate. I do not think we should get hung up on whether it is an officer or a counsellor or commissioner, by the way. However, it is important that we be no less in the eyes of the Canadian people than the members of the other place. The members of the other place have decided that their ethics commissioner should be in statute. We heard earlier today from Senator Milne, and I think in very clear terms, that of all parliamentarians we are the ones who should be answerable to a higher standard. Why? Because unlike all other parliamentarians, all other members of legislative assemblies and members of territorial houses, we never face the electorate.

• (1700)

The executive appoints us. Each senator sitting in this room gets his or her appointment from the executive. I fail, quite frankly, to understand, since we are all appointed in that way, why we have such fear — and it seems to be fear — that a parliamentary officer who would serve as the ethics officer should not be appointed in the same way, particularly when the proposed legislation is extremely clear. The proposed legislation says that this can only be an Order-in-Council appointment after resolution in this chamber. Honourable senators, that is the operative word: "resolution" of this chamber. Then it becomes a statutory position through Order in Council and via this legislation.

Why do I think that? Honourable senators, I want this individual, who takes this position after resolution of this place, to have comfort that he or she must give the very best possible advice to the Senate of Canada. He or she should not be the least bit concerned that by a simple resolution of this chamber we could remove that person, because I do not think that that is the right thing to do.

Some will say that will not happen; we would never have that happen. Honourable senators, we could see that happen. We saw it happen in the Government of the Northwest Territories when they chose to fire their ethics counsellor and he took them to court. That is a situation that can exist. Tempers can rise. People can get angry and they can pass resolutions.

Honourable senators, we need to be above reproach in this matter. We need to ensure that the person we hire will be able to show the integrity of the office in full measure. That is why removal cannot be simple. That is why this specific proposed legislation requires an address of this chamber, but also action by the Governor in Council. That is fairness. That is equity. That is accountability. That is transparency.

Honourable senators, we have heard a significant amount of discussion today from people who say that they want to ensure the powers of this institution. I, too, want to ensure the powers of this institution. However, above all, honourable senators, I want the Canadian people to have faith in us, to have confidence in us. I want the Canadian people to say, "Yes, I respect that they get their office by way of the executive, but when they come to this office I respect the fact that they have an ethics commissioner and that that ethics commissioner is not in place at the whim of senators, but that that ethics commissioner is in place with some protections."

That is why the committee, for example, and I think very wisely, said this appointment should not be for a period of five years. They said if we put in place a five-year appointment, then that five years would correspond with the electoral process and there may be pressure on a new government to influence the reappointment of this officer. We said, no, we want a seven-year appointment. We want it renewable and it can only be renewable by another resolution of this place.

Senator Bryden: It does not say that.

Senator Carstairs: We have a process and that is the only way it could be renewable, Senator Bryden.

Senator Bryden: That is not true. Read the act.

Senator Carstairs: The ethics counsellor, commissioner, officer — we call it an officer of this place — will be totally under the direction of our Senate. The rules of this place will be totally within the discretion of this place. Why, honourable senators, is there such fear?

Senator Forrestall: Thin edge of the wedge.

Senator Lynch-Staunton: Nobody mentioned that word.

Senator Carstairs: Why does it exist? If we are not afraid, then why do we have such reluctance?

Senator Kinsella: We do not like the way you are doing it.

Senator Carstairs: Such reluctance —

Senator Kinsella: There are other ways of doing it.

Senator Carstairs: — to put into place an individual in the same way that we put into place the Auditor General of Canada? I asked one honourable senator the other day if he had any lack of faith in the Auditor General being independent. He indicated no; he certainly did not. However, the Auditor General is an Order-in-Council appointment. The Privacy Commissioner is an Order-in-Council appointment.

Senator Stratton: Fine example.

Senator Carstairs: The Information Commissioner is an Order-in-Council appointment. The very fact that they are Order-in-Council appointments, although some of my honourable colleagues do not agree with me, is what gives them a sense of their independence.

Honourable senators talk about wanting independence, our need for independence. In my view, by this amendment we would deny the same kind of independence to our ethics officer that honourable senators themselves want to have. I find that argument invalid.

• (1710)

Honourable senators, we should heed the words of Senator Roche yesterday. He is an independent senator with no party affiliation. Although in the past he had an affiliation with the party opposite, he chose to come to this place as an independent senator. Senator Roche spoke about the need for us to go the extra mile in terms of transparency and accountability. He urged us to listen to the people of Canada.

I heard it said earlier this afternoon that very few people in the provinces, where there are ethics counsellors and codes of conduct, know anything about them. Well, they certainly know something about it when there is a conflict, because the conflict is pointed out. That is when they know about it.

My position on this issue is, as I have said in the past, based somewhat on my own experience. I sat in a provincial legislature to which I was elected three times. Each year, according to set rules, I had to file with the clerk of the chamber details of the property that I owned aside from my personal residence. If I recall the wording of the bill correctly, if I owned 5 per cent or more of a company, I had to declare that. It was all very transparent and open.

I do not believe that we in this chamber want spousal disclosure, because I think we have matured, but that will be a debate for later. However, in Manitoba we do make spousal disclosure. My husband was a corporate officer of a company, and he divulged all that was required of him. We had no concerns about this because he had to divulge exactly the same things to the American stock exchange on which his company was registered. He had to list the directorships of all his companies with an American stock exchange, so it caused him no concern.

We may not do that. We may have different rules and requirements, and that is up to us. However, honourable senators, please do not fall into the trap of lack of transparency and accountability. Honourable senators have said, "Don't be afraid of the headlines; it will just be a one or two-day phenomenon." I do not agree with that. It will not be a one or two-day phenomenon.

How many honourable senators have come in here on a Monday morning at 11:00 and spoken to students from Encounters Canada or the Terry Fox Centre? I love doing that, possibly because, believe it or not, my first love is not politics but education. Until I became leader, I did that on a fairly regular basis. When other honourable senators who had committed to do this could not fulfil their commitment, someone would come knocking on my door and ask me to speak to the students. I did that as many as 10 times a year. The first question those students asked of me was how I got appointed to this place. They would ask what my obligations are and what standards I must uphold within my position. That is a pretty tough question to answer if you want to be totally honest with young people.

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker: I regret to interrupt the Honourable Senator Carstairs but, it being 5:15 p.m., pursuant to the order adopted by the Senate on November 5, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Nolin to Bill C-49.

The bells to call in the senators will be sounded for 15 minutes so that the vote may take place at 5:30 p.m. Call in the senators.

The sitting was suspended.

• (1730)

The sitting was resumed.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—
MOTION IN AMENDMENT NEGATIVED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, An Act respecting the effective date of the representation order of 2003.
>
> On the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Stratton, that Bill C-49 be not now read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and
>
> That the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

The Hon. the Speaker: The question is as follows:

It was moved by the Honourable Senator Nolin, seconded by the Honourable Senator Stratton:

> That Bill C-49 not now be read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and
>
> That the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Beaudoin	Lynch-Staunton
Cochrane	Nolin
Doody	Prud'homme
Forrestall	Rivest
Johnson	Robertson
Keon	Stratton—14

NAYS
THE HONOURABLE SENATORS

Bacon	Joyal
Banks	Kenny
Biron	Kroft
Bryden	Lapointe
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Merchant
Chaput	Milne
Christensen	Moore
Cools	Morin
Corbin	Pearson
Cordy	Pépin
Day	Phalen
De Bané	Plamondon
Downe	Poulin
Fairbairn	Poy
Finnerty	Ringuette
Fraser	Robichaud
Furey	Roche
Gauthier	Rompkey
Gill	Sibbeston
Grafstein	Smith
Graham	Sparrow
Harb	Stollery
Hubley	Watt
Jaffer	Wiebe—52

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA BILL

PRIVATE BILL TO AMEND ACT OF INCORPORATION—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-21, 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, acquainting the Senate that they had passed this bill without amendment.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

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 third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.
>
> And on the motion in amendment of the Honourable Senator Bryden, seconded by the Honourable Senator Sparrow:
>
> That Bill C-34 be not now read a third time but that it be amended,
>
> in clause 2,
>
> (i) on page 1, by replacing lines 8 to 27 with the following:
>
> **20.1.** The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.
>
> (ii) on page 2, by deleting lines 1 to 49,
>
> (iii) on page 3, by deleting lines 1 to 11.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I want to conclude with just a very few more remarks.

I spoke about being in this chamber with young people. I want to be able to tell them that we have an independent ethics officer; that that independent ethics officer gives us advice. He is, yes, under the control of the Senate; but we cannot remove him easily because there are a number of steps — not just one step but a number of them — that would have to be taken to do so.

We tried a different system, honourable senators. There has been a lot of criticism of a man by the name of Howard Wilson — a lot of criticism. I think it is unjustified criticism. He is my ethics officer. As a minister, I go to him. I have also recommended that senators go to him on occasion, when they have asked me a question that I cannot answer because our rules do not seem to have an answer. He has always been extremely courteous, informative and helpful to them.

Let us be honest: His position has not been universally acceptable. Why? Because he is appointed and reports to the Prime Minister. That is why we have changed it in this legislation.

Senator Lynch-Staunton: Ten years later!

Senator Carstairs: That is why we will now have an independent ethics commissioner for public office-holders, for members of the cabinet, for members of the House of Commons.

We here in the Senate say, "We don't need one. We don't need one who will be independent in the same way." Well, honourable senators, I respectfully disagree with that position. I would say, honourable senators, that this bill has been 30 years in the making — 30 years in the making! Senators and members of Parliament have talked and talked and talked. They have talked it through prorogations so it disappeared off the Order Papers. I beg you, honourable senators: Do not do that this time!

Some Hon. Senators: Hear, hear!

• (1740)

Hon. John Lynch-Staunton (Leader of the Opposition): I have many questions, but I am sure they will be asked by others. I just heard the word "prorogation." I was being faulted when I made mention of it. Is the minister now confirming that there will be prorogation? Is that what this is all about?

Senator Carstairs: No, honourable senators, I am not confirming or denying anything, since I simply do not have any information.

Senator Lynch-Staunton: The honourable senator must have some because her deputy leader gave a notice of motion earlier that the Senate would be sitting on Monday, the day before Remembrance Day, therefore upsetting the schedules of some of us who, every year, even before coming here, would attend a traditional cenotaph ceremony. I live in Georgeville, Quebec. The Remembrance Day activities there start at 9 a.m. If we are here through Monday night, I will not be able to attend.

I am not the only one who would be affected by this. Some senators live much farther away. We are being asked to come back on Monday — and we are told that this has been done before — and perhaps on Wednesday of next week, when we are scheduled to sit the following week. That is our regular schedule. We are asking about prorogation and we are being told: "No, I don't know. Maybe, maybe not."

On the subject, can the honourable senator tell us why we are or might be coming back next week, according to the notice of motion?

Senator Carstairs: Indeed, honourable senators, we may come back next week. We have lots of work to do.

Senator Lynch-Staunton: Why can that work not wait until the following week, since our calendar takes us into December 22, 23 and come back in January, if need be?

Senator Robichaud: Let us do it now.

Hon. Richard H. Kroft: I have a question or two for the honourable leader.

Senator Lynch-Staunton: Show some respect to veterans!

Senator Kroft: In the interests of clarity, I have a question for Senator Carstairs. The honourable senator talks to her students in the chamber about projecting the future that she would like to see, and she would like to tell them that we have an ethics commissioner who cannot be easily removed. I ask this question irrespective of any individuals who may have held office or may in the future hold office: Is it Senator Carstair's view that the public would have more confidence in an appointment made by this chamber or an appointment made by this chamber in which the Prime Minister of the day has a hand? Is it the case that the addition of the Prime Minister of the day having a hand in the appointment would enhance the public's view of the appointment?

Senator Carstairs: Honourable senators, I believe it would be enhanced if the officer of this chamber fulfilled exactly the same obligations as other parliamentary officers, such as the Privacy Commissioner, the Official Languages Commissioner and the Auditor General. Those are Order in Council appointments, not easily removed. They are independent from, I believe, all political interference. The Auditor General is an Officer of Parliament that we have had for some 125 years. I think that is clear evidence that Auditor Generals have been extremely independent.

Senator Kroft: I do not think my question was answered. Let me turn to another.

Senator Carstairs expressed concern about an officer or counsellor, or whatever we would choose to call this person, being able to be dismissed on a whim. What does "a whim" mean in parliamentary terms? "A whim" is when those sitting here make up their minds about doing something and do it. Another meaning of "a whim" is to act on a wish. It can also be called "a resolution," and that is what we would do. By resolution of this house, we would be able to dismiss this person.

In my speech earlier, I tried to make the point about the distinctions of this chamber and others. The honourable senator suggests that we look to other chambers across the country, and look to other provinces, but there are no other upper chambers. All of them have what the House of Commons has, and I referred to that in my speech as a power that we do not have, because their whim, their opportunity to act on a resolution, their power — and I was taught as a lawyer to look at every case not in the ideal but in the extreme, as if someone were doing mischief — is to dismiss the Prime Minister. We are not talking about an arcane situation; we are talking about real, live, political reality. In a house of responsibility, in a responsible chamber, which is every other chamber, that is what provides members with their ultimate safety, their ultimate power, and through them the Canadian people; because their whim, their resolution, their action can dismiss someone. We lack their power.

The honourable senator talked about terms. It is a fact that senators do not have to retire until they have reached the age of 75. That is our power. We are told that situation would apply to an ethics officer of this place because that would be an executive appointment, as is ours. It is a "one-time act." Once we are here, we are, within the broadest of limits, untouchable.

These analogies, which the honourable senator uses so glibly, with all respect, are not solidly based in constitutional law or reality. In this debate, I would like to see us comparing an upper chamber with an upper chamber, and an elected, responsible chamber with an elected, responsible chamber. Let us not mix analogies and metaphors to the point where we are drawing invalid conclusions.

Senator Carstairs: The honourable senator and I are in total disagreement, because I believe the very fact that we are an upper chamber requires from us a higher level of responsibility because —

Senator Kroft: You are refusing to address —

Senator Carstairs: I am sorry, senator, but I did not interrupt you.

Senator Kroft: That is right.

Senator Carstairs: The fact is that we are an unelected chamber. The ultimate power is not, I would suggest, the removal of a Prime Minister by members of the House of Commons; the ultimate power is the power of the people to remove elected members. That is the ultimate power. They have that ultimate power sometimes every three years, sometimes every four, but definitely, within the Constitution, every five years.

Senator Lynch-Staunton: What is the point?

Senator Carstairs: That is the ultimate power. We who are here until age 75, we who are, therefore, I believe, subjected to a higher standard, or should be, must not, by virtue of this amendment or defeat of this bill have it said in the public venue — as it certainly will be — that somehow or other statute is good enough for elected members but statute is not good enough for non-elected ones.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: I would maintain that we in this chamber, because we are appointed, are under closer scrutiny than are members of the elected House. Let us just say that one of us had taken that famous plane and gone to that famous fishing camp. We would have been asked to resign, whether a senator on the opposition side or the government side. Why? That would be because of our reputation. Yes, our reputation is suspect at all times, unfairly so, but it is.

Any time you see an article on the Senate, there is always some nasty part to it. The media for the most part refuses to admit categorically, outwardly, that good work is done here, by ignoring it most of the time. That is how they treat us, except when one of us missteps. I do not have to repeat the cases that we have suffered through here. We took corrective actions ourselves; we did not need a code of conduct to do it. Maybe we were late, but he was not one of our caucus members. It was not up to us to sanction him.

• (1750)

Senator Robichaud: He was a member of the Senate.

Senator Lynch-Staunton: He was a member of the Senate; as senators we were late, but we dealt with it — and we learned from it and changed our rules accordingly. We are under so much scrutiny here that we can hardly make a move. If it is a misstep, we are caught up right away and we are a headline.

Ministers over there have taken these flights and have been told — all of them — that it is perfectly all right, knowing full well that those flights are for one purpose only — lobbying efforts. One minister took the flight, went to the camp, and he was told, "It is all right that you went there because you were invited by a guest." However, he should not have gone the second time because he was invited by the owner. Same house, same river, same fishing rod and all — 10 years of fraudulent ethics application by an individual, named by the Prime Minister, reporting only to the Prime Minister and seemingly finding ways to excuse unethical behaviour.

In this place, the public is following us; the press is following us. I resent it being said that because I am appointed, I somehow have to answer to a higher standard than others. I like to think that we are always maintaining the highest of standards here, and we do not have to compare ourselves with others. We have our own standards here, we are meeting them here and we can do so without a code of ethics.

I feel that having complete authority over the ethics counsellor and naming him ourselves will put us under even closer scrutiny. We will have the responsibility to justify the naming of an individual for whose actions we would be completely responsible, whereas under the bill, he is imposed upon us. It is to be done after consultation with the leaders, not after agreement, and it is to be done on a majority vote, which means that it will be a government appointment. If he does not do his job properly, we can point the finger at someone else; whereas, in this case, we are taking on more exposure and making ourselves more liable to criticism if we name our own person. That is of advantage to the public, and it is certainly of advantage to us.

Second, and I will finish on this point, we are putting the cart before the horse. Senator Kinsella mentioned that before. What will the ethics counsellor have to do? We will write our own code of ethics. That is in the legislation. Our committees will be responsible for fleshing out this code. We will write everything. We will set the conditions. We will do just about everything, except name the individual responsible. Yet, the individual who will be responsible has yet to be told what he will do. We have no code.

Why do we not come up with a code of conduct right now? There is one floating around the Rules Committee. I do not know whether or not it was given out at an in camera session. In any event, I have a copy; I certainly will not reveal it unless so authorized. However, there is nothing in it that could not be discussed, even now. Why do we not tell the Canadian public, "Here is the code we want our ethics counsellor to apply." Thus we can show that we are getting serious about this isue.

I also resent being told that we are acting here on a whim. This is the word that the Leader of the Government used. I also do not like the comparison of being told, well, the Auditor General is named by Parliament, and the Privacy Commissioner and others. That is true. However, the Auditor General has no right to unilaterally come and pry into my private affairs and, in so-called good faith, allow them to be released in public.

The Hon. the Speaker: Senator Carstairs?

Senator Carstairs: First, let us be clear. This individual can only be appointed in the ultimate step of Order in Council after we have passed a resolution in this chamber. That is the only way it can happen.

Senator Lynch-Staunton: I agree completely.

Senator Carstairs: In terms of the code of conduct, I would like to think that it is very far advanced — that it could, with very few additional meetings, be one that is satisfactory. That is exactly what happened in the other place. They passed the legislation. They will be spending tomorrow debating the code of conduct in the other place. I think it is something that is easily achieved quite quickly, and that this individual will have work to do.

Hon. Herbert O. Sparrow: Honourable senators, when the Leader of the Opposition asked a question pertaining to sitting next week, it was a question in regard to the speech that was made because of Remembrance Day. My question, in turn, would be to the Leader of the Government.

We are worried about the image of the Senate, and we should be, but the image will be really bad if we decide that we will not be able to attend our Remembrance Day ceremonies this coming week. I think that is crucial to us — in particular, when you talk of those of us who do not live in Toronto or Montreal. We just cannot make it home and make it back to do those ceremonies. I think we talk out of one side of our mouths about the image of the Senate, and out of the other side we are prepared to destroy it. Perhaps you can answer that point in answering the other question.

The other question I have concerns your statement about senators having higher ethical standards — that we should have higher standards than the executive or the House of Commons. Why do you think that? All parliamentarians and executives should have the highest ethical standards. Why would we even think differently than that? What we expect from ourselves — and we have exercised it — we would expect from all of the government people, be they employees, elected people or the executive. You are differentiating and saying, we have to have higher ethical standards.

I believe that this chamber does have the highest ethical standards now. The people who sit here now, and with whom I have sat, have the highest of ethical standards. I would ask the Leader of the Government in the Senate if she would explain to me what particular higher ethical standard she would ask of us than she would ask as a citizen, as a Canadian, of members of the House of Commons or members of the executive? Give me an example of what she would say we should have as a higher ethical standard in this regard.

Perhaps you could answer, in turn, the question of what you consider to be ethical standards. Explain to me what you decide or determine to be ethical standards. Is it outside of honesty and pecuniary interest, et cetera? It is something that I cannot capture in my mind — what those ethical standards might be that the honourable senator is referring to.

Senator Carstairs: Let me begin with the first part of your question. That is exactly the reason why, in the notice put on the Order Paper by the Honourable Deputy Leader of the Government tonight, it was clear that when we sit next week, we will not sit on Tuesday — which is, of course, Remembrance Day — because that would be most insulting to our veterans. I think that veterans around this country would certainly appreciate — if we could not get home — our attendance at the ceremony here in Ottawa, which is a highly important ceremony for all of us who have ever been there on that day.

In terms of the highest ethical standards, what I am referring to, honourable senators, is the fact that the amendment that has been proposed by the Honourable Senator Bryden would say that members of the House of Commons shall have their ethics officer enshrined in statute; that the public office-holders and cabinet ministers should have their ethics officer enshrined in statute, but that the Senate should not. I simply do not accept that.

Senator Sparrow: I do not think the honourable senator heard what I said in regard to the Remembrance Day ceremonies. It is pretty glib to say that we can go to a ceremony here. We have, for all these years, gone to the ceremonies in our own areas, in our own constituencies, as such. They expect us to be there, and we expect to be there and we want to be there. We just cannot say we will go somewhere else — like a member of the Rotary Club might do, go on Mondays somewhere in the country. This is not the issue at all.

Some Hon. Senators: Hear, hear!

Senator Sparrow: It is extremely important that I be able to serve my duties in the Senate and, in turn, serve that important day in my constituency. I cannot do both. I appeal to the Leader of the Government in the Senate to reconsider that.

The other thing that I am concerned about in her answer is that she did not answer what ethical standards she may conceive that senators should have that other members of Parliament should not have, or that it would not be necessary for them to have.

Senator Carstairs: Honourable senators, the rules have not yet been written; the code has not yet been written. That will be written by the people in this place. I have indicated that I hope that it will be a very high standard that we would ask our senators to fulfil.

Honourable senators, I did some research in the records of the Senate of Canada, and there were some occasions when we sat on Remembrance Day.

Senator Sparrow: That does not make it right.

The Hon. the Speaker: Honourable senators, I am sorry. It is 6 p.m. The rules require me to leave the chair unless there is an agreement not to see the clock.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wonder if we could find consent not to see the clock.

[*English*]

The Hon. the Speaker: Is it agreed, honourable senators, that we not see the clock?

Some Hon. Senators: No.

The Hon. the Speaker: If there is no unanimous agreement that we not see the clock, then I must see the clock. It being 6 p.m., I must leave the Chair and return at eight o'clock this evening.

The Senate adjourned during pleasure.

• (2000)

The sitting was resumed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): My question is to the Honourable Leader of the Government in the Senate. I would like to ask Senator Carstairs about two areas.

First, I will build on what Senator Sparrow was asking about the notice of motion that has been laid down by the government that next week it wishes to sit on Monday and then on Wednesday, and I take it the rest of next week.

I can assure honourable senators that I will be here on Wednesday and the rest of the week, but I will not be here on Monday. I shall be laying a wreath at the cenotaph, as I do annually, in my province of New Brunswick. This year I will be laying a wreath in memory of our veterans and those who paid the supreme sacrifice at the Cenotaph in Oromocto, which is the location of CFB Gagetown. I would hope that all honourable senators would be at a cenotaph in his or her community.

The minister made reference to the fact that we do not have to go to our local cenotaphs; that we could attend at the National Cenotaph here in Ottawa. I wonder if she would like to revise that position, or indeed whether that is her strong position that she does not want to revise.

Senator Carstairs: Honourable senators, we took an oath of office to do our work. Our work is not proceeding nearly as quickly as I would like to see it proceed. Therefore we will call back the Senate of Canada for Monday and Wednesday, at least, of next week.

Senator Kinsella: Here we are, honourable senators, with an ethical conflict. We have an obligation, I agree with the honourable senator, to act in an ethical, moral, appropriate, and honourable fashion in doing our duty and being in our places. No one has been more assiduous at being in her place than the honourable minister. She sets a good example for all of us in terms of her assiduousness.

Some of us hope that we are doing our duty as well. We see that norm of being here. However, we also have another ethical standard that we attempt to meet. That is to honour those whose paintings around this very chamber speak to us from the Great War.

Honourable senators, we are faced with an ethical conflict. I wonder why the minister does not think that we could not complete this work between November 12 and our Christmas break, as the published Senate calendar provided. Indeed, all of next week was to be off.

On balance, what is the ethical thing for a senator to do — to go to the cenotaph or to come here? That is a moral dilemma. I do not know. Perhaps other senators can help me resolve that dilemma.

I will turn to another question. I have tried to listen carefully to the debate. There are at least two major schools of thought in this debate. With any debate, the proponents of one school will argue vigorously, as they should. Those of another school of thought will argue vigorously, as they should. Does the minister not admit to the possibility that she may be wrong and her colleagues and other honourable senators may be right on this one? Does she admit that there is a possibility that, although vigorously and quite capably argued, she might be wrong?

Senator Carstairs: Honourable senators, let me be rhetorical and ask the honourable senator if he thinks the same thing.

Senator Kinsella: Honourable senators, I have often been wrong. That is why I enjoy arguing. I think the word is "argument." Argument is a good thing. One advances one's argument, but one also listens to the other side of the argument. Therefore, I admit that, yes, I can be wrong. I may instruct the argument of others and, at the end of the day, very often find myself saying, "Yes, I was wrong and I have learned. I have been instructed by the better argument from the other side."

Senator Carstairs: That is very good for the honourable senator. That is why I have been sitting here through every single speech on this topic since it began.

Honourable senators, it is time to move on to other people who wish to speak to this matter. I will take questions, if there are questions, for another 10 minutes, but then I will not take any more questions and allow other senators to participate in this debate.

The Hon. the Speaker: Are there other senators who have questions, or other senators who wish to speak?

Hon. Joan Fraser: Honourable senators, I wish to speak if no other senator wishes to take the floor.

As I have been thinking about this bill, I have been reminded once again, as we so often are here, that the hardest challenges that we face in political and parliamentary life are the challenges that arise when we need to reconcile legitimate but conflicting interests. That is once again the difficulty in which we find ourselves.

I should tell Senator Kinsella that, indeed, over the course of this debate, over the many months that this debate has continued, I have been enriched from what I have learned from those who have differed from me. I have changed my views on some very important elements of this case. In the end, though, we still must deal with the fact that we have a conflict between two legitimate interests. It is our job to reconcile those interests.

The two interests in this particular case are both important and go to the heart of what our system is about. One interest is to preserve the rights and independence of the Senate, otherwise sometimes known as the privilege of the Senate. The other interest, which is equally important, is to maintain and enhance public confidence in the independence and integrity of the parliamentary system, which exists to serve the public.

I find myself saying more and more often, as I get older and look at the complexity of life, that democracy only works if people believe in it and if people believe that it is a system of integrity. The demands and needs of the public change over time. I am not talking about the flavour of the week; I am talking about great, long shifts in public concepts over time. For example, 600 or 700 years ago, we thought it was all right to have Star Chamber trials. We no longer think that.

• (2010)

Senator Cools: We do so in this bill.

An Hon. Senator: Order!

Senator Fraser: Having talked in those general terms, I will speak to what is, perhaps, the core difficulty that we have been wrestling with on this issue. I agree with other senators who believe we need to have a modernized ethics regime that fits our own needs and the needs of the public in the 21st century. If we are to have such an ethics regime, it must include an administrator, perhaps simply as a custodian of the files, and someone has to appoint that person. That is where we run into practical difficulty. Who should appoint that person?

If that person were appointed only by the Senate — if only the Senate were to have a voice in the appointment of that person — it would seem to me that, just as night follows day, that person would be perceived to be under the thumb of the Senate and thus permanently vulnerable to pressures exerted by those whom that person would advise and whose files and information would be entrusted to that person. That is a terrible burden to bear.

Earlier we heard a reference to poor Mr. Howard Wilson. I believe that he has been doing his very best to do his job. However, it does not matter how good he is because, in the public discourse, he has been so badly tarred with this image of being beholden to the people whom he is supposed to be advising that he labours under an impossible handicap, and it has tarnished public faith in the integrity of the process that he is supposed to uphold. We do not want to do that. We do not want to find ourselves with an ethics officer who is tarnished before he or she can even take the job because the public does not think the system is clean and independent.

I offer you a further thought. If we are the only people who have any voice in that person's employment, that person may feel a conflict, particularly when the time nears to seek a renewal of his or her mandate. That is why, months and months ago in the Rules Committee, I was trying to suggest to honourable senators that we should have a single-term, non-renewable mandate so that kind of pressure would never occur. I did not win that battle. Members of the committee thought, and I accept their reasoning, that it was more important to have institutional continuity to build expertise and understanding of the complexities of our lives with this person who would be established to advise us; and that is fine. That being the case, we truly must work hard to ensure that it is clear to all that this employee of the Senate is not beholden to only us, is not under only our thumb, and perhaps easily influenced, in inappropriate ways when hard cases arise.

Who else then should have a voice? Bill C-34 proposes quite a good system. Honourable senators would have a veto and the Governor in Council would be ultimately responsible for implementing the appointment that we had approved. I do not share the view that the majority in this chamber would ever rubber-stamp an inappropriate choice.

As we heard earlier this day, if sufficient members of the government side in this chamber believe that something is important, they will vote against the government. That happened today and not for the first time; it is not the first time that most of us have seen that happen. If an inappropriate recommendation were made to us, we would not accept it. I believe that with my whole heart. That is why I believe that, with the system proposed in Bill C-34, the Senate's interest in respect of the appointment of the ethics officer would be appropriately safeguarded, as would be other great interests of safeguarding the public's faith in the integrity and independence of our ethical system.

Honourable senators, the time has long passed, and I have said this before, when we can hope to tell the public with any degree of conviction or any degree of persuasiveness, "Trust us; just trust us to do the right thing." It does not work that way anywhere in modern society and it does not work here, either, I am afraid. It may be that some senators do not believe that public opinion matters in this instance, but that is a risky attitude to adopt. Carried to an extreme, that attitude is not unlike that of the pre-Civil War Stuarts — as if there were some kind of divine right of senators. There is no divine right of senators. We have to be, and be seen to be, the servants of the public.

I was reminded today of something that happened when I was appointed to this chamber. An old friend of mine, with whom I had worked on a daily basis for 20 years, was the eminent cartoonist of *The Gazette,* whose pen name is Aislin. The next morning, on the editorial page of *The Gazette*, my old friend had drawn me turning into a pig at the trough. There were words in the cartoon to ease the bite of that message and because I knew he was my friend and because I had faith that in my own community the people who saw the cartoon would know me well enough not to think that I was a pig at the trough, I was not excessively hurt. Indeed, the cartoon hangs on my office wall today. At the other end of the country, someone who saw the same cartoon would have had no reason to think other than, "Oh, another pig at the trough."

That is what a significant portion of the public thinks of us, senators. They are wrong, but they do think that. If we were to give ourselves what is perceived as special, extra-soft treatment that would enable us to indulge self-interest, then that perception would damage us and would damage, one more time, the political fabric of a country that deserves better.

That is why, despite my great respect for Senator Bryden, I cannot support his amendment and why I do support Bill C-34 as it stands before us. I am hopeful that most honourable senators will do the same.

Some Hon. Senators: Hear, hear!

Senator Sparrow: The honourable senator just mentioned that some here would believe that public opinion does not matter. I do not think I have ever heard that statement in this chamber or anywhere else from senators. As far as I know, all senators are concerned about public opinion. We operate on the basis that we wish to be well thought of in the public polls.

• (2020)

As we look at it, sometimes one must vote against what might be a body out there that is opposed to one's thinking. There have been many occasions in the past when those things have happened, for example, in relation to hanging, to divorce and to all of those other things, when there was a split in the public view, right down the middle, and a decision had to be made. I am sure no one wants to make that kind of decision. It would be wonderful to make it where you had 100 per cent agreement.

Would the honourable senator advise me: Did she mean that? Does she believe that there are people here who say they do not give a damn about public opinion?

Senator Fraser: Honourable senators, in response to Senator Sparrow, I am sure that I used the word "may." I do not pretend to be able to read the minds of my colleagues. Some of the things that I have heard people say have led me to think that perhaps some people might have some element of that concept in their thinking.

To go to the more substantive portion, in my view, of Senator Sparrow's comment, it is true that we are often called on to vote our conscience. The death penalty is an excellent example. Many are the legislators who have voted against the death penalty, even though his or her constituents favoured it, or a majority of them did.

The difference is that in the case of Bill C-34, we are not dealing with matters of principle that affect third parties. We are dealing with matters that affect ourselves. Therefore, we must strive even more than we normally would to maintain public confidence in the integrity of the public's Parliament.

I would be glad to hear other senators rather than going on eating up time myself, if they wish to speak.

Senator Prud'homme: Go on, it is interesting.

Senator Kroft: I do have a question.

Senator Fraser: I will take Senator Kroft's question because I invited him to put the question earlier this day, but after that I will cut it off.

Senator Kroft: I am putting the question as a way of clarifying something that is very important. It follows on the question of Senator Sparrow. Would the honourable senator not agree that there is a significant difference between saying, "I do not care or we do not care what public opinion says," and what I said in a number of ways in my remarks, that if we feel that what we are doing is right, we must not let public opinion, whatever it is, intimidate us? Does the honourable senator accept that there is a distinction between those two things?

Senator Fraser: Of course I do. I believe I tried to suggest that when I was responding to Senator Sparrow.

Set aside for the moment the phrase "public opinion," which is sometimes loaded because that gets you into government polls and accusations of all kinds, and think in terms of public confidence in the political process. That is what I am talking about when I talk about public opinion in the context of this bill.

I know that many senators have thought long and hard about this bill and about all the implications behind it, codes of ethics, legislative versus rules-based systems and parliamentary privilege. There is a great deal we have all thought long and hard about. I do not in any way belittle the conclusions that senators reached if they differ from mine. I am not putting down senators who do not agree with me, but I do wish I could persuade them to agree with me because I do believe that this is an important point.

The Hon. the Speaker: Unfortunately, Senator Fraser's time has expired, and she is not asking for additional time.

Senator Prud'homme: She should!

The Hon. the Speaker: Did you want to speak?

Senator Cools: I did not want to speak, but...

The Hon. the Speaker: Senator Banks.

Hon. Tommy Banks: Honourable senators, I have been listening carefully to this debate. The debate is about, in the main, perception, as I understand it, the way we will be perceived, depending on how we go about this task. I believe that there are some misapprehensions, specifically in respect of the debate on this amendment, which some members of this place have. Unless I have misunderstood, I have heard it suggested that this amendment purports to go about this task by some means that

is not statute. That is not anything that is included in this amendment, or that this amendment has something to do with defeating this bill. This amendment does not say anything about defeating this bill or about arriving at the end at which we hope to arrive by any means other than by statute. The fact that this is an amendment to a bill not only contemplates but also presumes that the means by which it seeks to change the way that we will end up with what we want will be by this proposed legislation, and, therefore, by statute.

The question that is being talked about on all sides has to do with how the Senate will be perceived, depending on how we arrive at the choice, installation, naming and enthroning of the officer in question. The argument has been that there will be greater confidence and a greater perception of independence — and I am talking about the argument against this amendment — if the appointment ends up being made by the executive, rather than by the Senate.

The following rhetorical question has been asked: Is it believed and perceived by the public that the Auditor General, for example, is independent and is held in confidence? Yes, but the corollary is this: Would the Auditor General be seen to be less or more credible or independent, or would more confidence be reposed in that office if the choice of the person in that office were made otherwise than by the executive? I do not know the answer to that question. I do not think it follows naturally that the confidence in that office or the results of the workings of that office would be any less if the appointment were made otherwise than by the executive.

My recollection of the public outcry about the question of to whom the ethics adviser in the other place and here reports is that it had to do precisely with the fact that he was appointed by the executive and, therefore, is seen to be accountable — by which I think the people read "beholden" — to the Prime Minister, to the executive.

If, as the leader has suggested, the choice of the ethics officer will be made by resolution of this chamber — so what is everybody worried about — then why do we need, on top of that, the Good Housekeeping seal of approval of somebody else, once this house has passed a resolution? Are we not masters of our own house? What lustre is brought to that selection by the laying on of the hands of the executive? If the public outcry having to do with the ethics officer who is presently in place is to be given any credence, the opposite is true. The object is to make sure that the Canadian people have faith and confidence in us. I believe that they will have more faith and confidence in the selection by a House of Parliament than they would have in a selection and a laying on of hands of an appointment by the executive.

• (2030)

It cannot be argued in the same breath, senators, that we need a greater perception of the officer not being "under the thumb" and that this can be achieved best by that officer being appointed by the executive. It cannot be argued in the same breath that it will be the Senate who will endorse, approve and choose the officer and that some additional degree of independence is achieved by that appointment in the end being made, in effect, by the executive. One of the halves of both of those two contentions is wrong. I do not know which one, but I am convinced that this amendment not only does not seek to defeat this bill, not only does not seek to remove the eventual resolution of this question by means of a statute, but that it specifically does mean to resolve this issue by means of a statute — by means, in fact, of this statute, but in a different way.

The perception question about which we are talking is entirely subjective and not objective. It boils down to a question of whether we believe that an appointment would best be made by this house and be seen, therefore, to be more independent and less beholden to any identifiable person or persons, on the one hand, or by the executive and whether that would be seen to be less or more beholden, on the other hand. I have to believe at the moment, failing being convinced otherwise, that the former is the case.

The Hon. the Speaker: Senator Smith has a question, but I should see Senator Cools, as she has been trying to get my attention for some time.

Senator Cools: I do not mind deferring to Senator Smith. I know he always has great words of wisdom. I do not mind at all. The honourable senator can go ahead.

Hon. David P. Smith: Senator Banks, when you read the section wherein the Governor in Council shall, by commission under the Great Seal, appoint the Senate ethics officer after consultation with the leader of every recognized party in the Senate, and after approval of the appointment by resolution of the Senate, could it not be argued that, in a sense, only the executive can nominate or put forward someone, but that that person is not appointed until they have the approval of the Senate? In a sense, you have two entities sort of blessing it rather than just one. Would you not see some merit to a system like that where one, for all intents and purpose, nominates, but that nomination is subject to being approved by the Senate?

Senator Banks: Not only could that be argued, but it has been argued here, and at length. However, the question is absent the necessary response to it because we do not know, as has been said, what the means are that will be in the rules, which we all understand will be dealt with later, by which the Senate would decide to appoint this officer. The amendment simply says "The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate ethics counsellor."

No one pretends that we will open up the front door and ask people to come in off the street, interview them in the Committee of the Whole and then make some selection. I presume that the rules, which we all understand will follow from this, will have in place, or at least the practice will have in place, some sort of selection committee of the Senate, or some means by which the Senate may choose to delegate to someone else. The Senate may well, according to this amendment, for example, ask that a committee of eminent persons, not of the Senate, be empanelled to make a list of nominations to us. The possibilities are endless. The means by which the nomination/selection/approval process would happen have not been determined yet. However, they are not written in water either. It says that the Senate will do that. I do not know whether that process, whatever it ends up being, would be either less or more credible than the dual process about which the honourable senator speaks.

Senator Smith: When it says "by resolution of the Senate," presumably you would have a vote in which that person or nominee got a majority of those voting. Would it not be analogous to the U.S. system when someone is nominated to the Supreme Court? Only the President of the United States can put forward the candidate, but they do not get there unless they have been sanctioned by the Senate, which in a sense is sort of a double-check, so that you have two entities rather than just one doing that. Do you not see some advantage to that?

Senator Banks: I see something meretricious in that, in my view. I will take that back, because it is pejorative. Meritorious. In the Republican system, however, we must take care not to graft the wings of an eagle on to a moose.

Senator Kroft: Senator Banks, you were going around the matter that I think is enormously important. Senator Smith seems not to have made one particular option obvious, which I think is fundamental to the amendment before us. In a chamber and on a subject in which fairness for every one must be of the very essence, is there not an absolutely irrefutable distinction between a system that calls for approval by a majority and one which calls for a full approval assured by not the consultation with but the agreement with leadership on all sides? Is that not much more to the core of fairness that we need?

Senator Banks: I think that ecumenism would be more likely in the case that you describe than otherwise.

Senator Cools: My question has been evoked by Senator Fraser's statements. I wonder if Senator Banks, perhaps, could do us the honour, because otherwise some confusion or misunderstanding will result.

My question to the Honourable Senator Banks has to do with 20.2(1), the question of the removal of the ethics officer.

Honourable senators, I have heard of addresses to the Governor General, and I have heard of addresses to Her Majesty. An address is the mode of communication between Her Majesty and the chambers. However, proposed section 20.2 says "may be removed for cause by the Governor in Council on address of the Senate." I wonder if Senator Banks could help me with this constitutional novelty called an address to the Governor in Council.

Senator Banks: Given my recent arrival here, I find the whole Constitution a novelty, senator. The one thing about the clause to which you refer that bothers me is that in the event of such a removal, the person who replaces the officer having thus been removed is appointed by the executive — period, no ifs, ands, or buts — for a period of six months.

• (2040)

Again, I know we are not seeing bogeymen under the bed and not ascribing anything to anyone and perhaps I am paranoid, but a great deal of harm can be done in six months. The person who would be the replacement would be someone who would not be subject to the approval or consultation with the leaders of the recognized parties in this house under the bill as it is presently worded, and would not be appointed subject to the approval of even a majority in this place, which majority as we all know will, from time to time, swing from side to side.

The Hon. the Speaker: Senator Banks, your time has expired. Do you wish to —

Senator Banks: No.

Senator Prud'homme: May I ask Senator Banks a question?

Senator Banks: I would prefer to hear other senators speak, Your Honour.

Senator Prud'homme: No problem.

The Hon. the Speaker: Are there any senators who wish to speak?

Senator Carstairs: Question!

The Hon. the Speaker: Senator Andreychuk.

Hon. A. Raynell Andreychuk: Honourable senators, I have entered this debate several times as Deputy Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament. My comments about many of the issues are on the record.

I want to speak more personally today. Ten years ago when I entered the Senate, I had come from the legal society, the judicial environment and also the foreign affairs environment. In each case there were rules by which I was bound to abide. In some cases they were codes of conduct. In some cases they were practices. In some cases they took other forms. In each case there was a measure of peer respect and evaluation of peer on peer.

In each one of these environments there had been a movement to be more transparent and to involve the Canadian public to ensure that people understood that there was some reflection on the issues of behaviour and conduct, and discussion about whether we were adhering to normally accepted practices and living up to expectations. These were done not to punish us but to encourage us to be open to new ways of working, open to criticisms and open to improvement. In other words, it was a question of professionalism and it was a question of the integrity of the system that was in dispute or question.

I am reminded that one of the first chief judges with whom I dealt said, "People will tell you to use common sense, but there is nothing common about common sense." We all come with our experiences, backgrounds and cultures, and in this diverse society we need to come together to ensure that when we work together we have some understanding that what I do does not impinge on your professionalism, your freedom and your right to perform the tasks and duties that are assigned to you.

Therefore, when I came into the Senate the first question I asked was: Where are the rules and what am I obliged to follow? I received two answers. There are the *Rules of the Senate*, there are the practices and policy, there is the Parliament of Canada Act, the Constitution; in other words, this is one of those places on which you cannot reach for one set of rules, and that I should continue to be guided by my own conscience. However, I should be reflective on all of the other legislation, policies, practices and conventions that are in place. I should also be mindful and take the advice of my peers. Many people were here before me, and their experiences are valuable.

I came armed with my own opinion of how I would operate in this place. I continue to do so. However, I have changed my ideas about many of my cherished value systems because I have seen other value systems placed before us here. I hoped that that is what would happen when we were moving to one more phase. That phase would be an ethics package, not an ethics regime. I do not know whether it is the lateness of the hour, but personally I am disappointed when I hear things like "the ruling party" and not "the governing party," "ethics regime" rather than "ethics schemes" or "rules," "power" being used and not "authority."

That is part of the problem here. We are in change. Some of the changes that we have had on Parliament Hill have been negative and the people have reacted. I feel that in the 10 years since I have been here, we have progressed. We have improved. I cannot say that other parts of the system have always done the same. There has been a movement up and down, and I think we have been caught by it, and most of it around the executive, in particular when we talk about ethics. I will not go into the details.

I had hoped that this piece of legislation, Bill C-34, would have been treated like every other piece of legislation that we have before us. We pride ourselves in scrutinizing legislation, hearing from citizens and doing a full and effective job. We were told with the greatest sincerity, I presume, by the government that there would be an ethics package that would be the code, the rules, that it was time to codify them in some way, and that there should be an overseer of this code, some ethics officer.

We started our work — I will go through this again because I think it is important. We started our work and, as honourable senators can see from the debate in this chamber, we have not come to a consensus about what the subject-matter is, what are the principles, let alone what this legislation means. We were thwarted in the middle of it by being told that we had to submit a report. Again, I put it on the record: the opposition said that that is not the way to go, that we must finish the job. However, we were told no, we were not being given that discretion and that right to complete our task. We did not want to do it because we would be into this Catch-22 situation, in which we now find ourselves.

Yet, we yielded to the majority here, knowing one thing: They are the majority and they can impose their will, but we thought they were doing it in the best interests of the Senate. We then said all right. Our colleagues, the majority, wanted an interim report, but that interim report, even the statements found therein, are not ones with which we agreed as final. I had great difficulty with all of them. In light of the evidence we took, they seemed to be fair assumptions for the moment, but I said time and time again that I might change my mind. I was not given that right.

The next thing that happened was that nothing happened: Months went by and there was no code. There was no legislation. We then heard that there would be a bill, Bill C-34, the bill that is before us. Honourable senators, how many pieces of legislation have we heard about? A piece of legislation that we should deal with is Bill C-13, which should be passed. Bill C-250 should be passed or these should be rejected, I would say, but it should be dealt with. I could give honourable senators a whole host of pieces of valuable legislation that have died on the other side.

I defy anyone in this place to say that he or she does their homework anticipating bills coming, because bills get changed. I have respect for the House of Commons, but I have only so many hours in a day, so I work on the legislation that is referred to this place. I listen to my leader and to the Leader of the Government in the Senate to give me a heads-up as to what will be coming forward. I ask the chairs of my committees what will be coming, and we have steering committees to discuss what we are having. I am told Bill C-34 was in that category that, well, perhaps, maybe, we think so, it is important, but we do not have it yet, we do not have a timetable. Then we receive it and in very short order we have to deal with it.

Now, I was prepared, in generosity to the majority again, to say, "Okay, we will continue with the ethics package in the Rules Committee," but Bill C-34 is a technical, legal document, and it should go to the Standing Senate Committee on Legal and Constitutional Affairs, but that did not happen, and we are told we need it today.

• (2050)

Honourable senators, if we want to be respected here, we must demand respect from the other arms of government. If this bill were so important, we should have been told that, rather than playing games. In 2003, we are playing games. Maybe we are sitting; maybe we are not. Maybe we are proroguing; maybe we are not. If I were a betting person, I would bet that the Prime Minister is not staying in office until February. However, I do not know when he is leaving, and perhaps no one knows. Yet, surely we should have been given notice that this would happen instead of being told that we could continue our work until December 18.

It is time to stop playing games. I am very disappointed and saddened that, in 2003, we are told that this bill is important for someone's legacy. I am afraid to make it political, but I have been politicized by being made to deal with a bill with which I do not agree, with which I disagree for different reasons.

I respect what Senator Hubley said. She talked about why we need to be responsive to the public, and I agree with her. I sat on the committee that was supposed to examine the bill, but I was not given the opportunity to properly assess it.

Had I been able to finish examining the ethics package, as we were promised, or at least had I been able to finish examining the bill, perhaps colleagues would have changed my mind, but to this day I believe that the best method is to have legislation for an ethics officer with a code of conduct in that legislation. That is the only way to be transparent to the public, otherwise we are being duplicitous. We are telling the public that there will be a code of conduct and an independent ethics officer. If this debate has proved anything, it is that we do not know what we are getting. Senator Grafstein is right about that.

Senator Furey pointed out various proposed sections that bother him. I have not bothered listing all the proposed sections that bother me, because we have not heard witnesses and we have not had sufficient time to deal with this.

Just think of it: We will pass the bill, if it is the will of the majority here, and the public will say, "Hooray, we have an ethics officer and a code of conduct," but make no mistake, the next Prime Minister will bring forth a new ethics bill because this bill is nothing but smoke and mirrors. It is deception to say that we are doing something for the public in Bill C-34. We are implementing bits and pieces, and they may come back to haunt us.

I do not want to play games with the public and I do not want to be played with in this chamber. I want honesty, and I want a sophisticated, modern and democratic system. I want to be respected in this system. I want to finish an ethics package.

I yielded to Bill C-34 in the belief that we would have sufficient time to deal with it. I know that the majority of those who have studied it want a rules-based rather than a legal-based system. Had the process evolved properly, I would have had my day to make an impassioned plea for a code of conduct and an ethics officer within the bill. I think that a lot of women in this room would probably support me on that.

I was not given that opportunity so I agreed to go with Bill C-34 if we could ensure that it is constitutionally valid, that it is not misunderstood and that it can withstand a challenge by the public, by the press, by the courts and, more importantly, by us. I do not think we have that. I think we have a bill that is simply smoke and mirrors; simply for the sake of someone being able to say, "It is my legacy."

Honourable senators, that is not why we are here. We are here to pass sound legislation, and I do not believe that Bill C-34 is sound legislation. I laud the government for what it wants, although this is not what I want. I want a code and an ethics officer; the government wants only an ethics officer. However, I am not sure that this bill gives them that, and I wanted to ensure that they got what they intended to have.

If we pass this bill with its questionable sections, how can the public have confidence that we are doing the job in which we pride ourselves, that is, improving the proposed legislation that comes from the House of Commons, ensuring that it is constitutionally valid, that it passes the Charter tests and that it is good, implementable legislation?

Honourable senators, I am not sure this is good legislation. I am certain, however, that the conduct of this bill is bad policy, bad management and not good governance. Therefore, I ask honourable senators to take the time to reflect in the best interests of the public. If we were to delay this bill and have the appropriate debate, we could all take pride in it. If prorogation occurs, it will be incumbent upon us, before Parliament reconvenes, to have framework legislation or a rules-based system that provides for an ethics officer and the codification of our rules. If we do not do that, we should not be trusted.

I thank honourable senators for their attention.

Hon. Gérald-A. Beaudoin: Honourable senators, I am of the same mind as my colleague. I have no doubt that this bill, as it is drafted, and the way in which we want to appoint the ethics commissioner, is unconstitutional. If you have a system wherein the executive, that is the Prime Minister, and the legislative branch, that is the House of Commons or the Senate, are dealing at the same time with the same matter, it is not in accordance with the Constitution. The amendment proposed by Senator Bryden contains a much better formula, as the matter would be dealt with by the legislative branch. His amendment reads:

> The Senate shall, by resolution with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

There is also another problem that I see in this measure. I cannot see how we may talk about the way a commissioner will be appointed before we have a code of ethics. Being a jurist myself, I think that the code of ethics should be drafted first.

[*Translation*]

We cannot have a system as new and important as the one we want to have without there being an appropriate code setting out the principles we wish to codify. There is no doubt in my mind that a code of conduct is necessary. There is no doubt in my mind that we must have one eventually, but a really significant code cannot be put together in a few weeks. That is impossible. Nowhere in the world has that ever been done. I believe we need to take the time to produce an appropriate code.

At some point, however, we must agree on an appointment policy. In my opinion, the legislative branch must be involved, not the executive. That is what democracy is all about. People must be free. People must have power, and we must establish a system that works properly. I think that, in this respect, we are verging on the illegal.

• (2100)

Second, we must also produce something that will stand up. We are talking about regulations, but perhaps the best way would be to pass a law.

As someone who joined the committee almost as a last resort, I can say that there are two opposing arguments: one for a law and one for a code of conduct. Both are valid arguments, but it is important to respect rights. It is all very well to say that the courts will interfere with what is happening in the House of Commons and the Senate, but I put my faith in the judicial branch. I know that the Supreme Court justices will respect our privileges and our rules.

The courts know that we need latitude to legislate and to ensure that all is done according to the rules. They also know that we will comply with the Charter of Rights and Freedoms. Because, if the courts cannot intervene, it will be necessary to apply some principles and they are the same principles found in the charter.

Whichever of the two systems we choose, we must accept the fact that either we go with a law or with a code and a set of rules. In either case, we must make sure that everything is constitutional and respects our values. I believe strongly in this and I think it would be impossible to pass legislation in just a few days.

Before discussing the way in which an ethics counsellor would be appointed, we must first think about drafting a code of conduct. In my opinion, it seems obvious that we are putting the cart before the horse.

In addition to drafting a code of conduct, we must also establish a system to ensure that the appointee will be independent and will defend our interests. In that respect, I think Senator Bryden's proposal is the better of the two.

Hon. Marcel Prud'homme: Honourable senators, I wanted to ask a question of Senator Banks, but he has chosen to let the senators speak rather than answering questions. I would have liked to ask him a question, rather than making a speech that I did not intend to give.

[*English*]

Right now, I do not know — regardless of pressure and telephone calls — how, at the end of the day, I will vote on this. However, it will be my personal decision and not the decision of anyone else in the Senate. I hope that is clear.

My question to Senator Banks would have been a simple one. Senator Banks said he floated the idea — and I think it is a good idea — of a committee of eminent people. Honourable senators, I would rather have the Prime Minister of Canada personally appoint an ethics commissioner and be responsible to all the people of Canada than have a committee of eminent people where I am not consulted — in fact, where none of us will be consulted — about who will sit on this committee of eminent people. Of that, I am positive.

Senator Smith: Hear, hear!

Senator Prud'homme: We listened to a speech last night and I made a joke with a friend, saying that I should call him "Beatitude" because he gave us so many beautiful reasons for voting for the bill. My attitude was: This "Speech from the Throne" must be very good, because the speaker is an intellectual and a good and thoughtful man, so I read his speech again. I prefer not to respond to it line by line, because people will say there is a fight among the independents. However, I do not happen to share his views.

I sat on the first committee on ethics. On this point, Senator Carstairs is absolutely right. This subject has been floating around for many years. I did not sit on the Milliken-Oliver committee, I sat on the earlier one, the Blenkarn-Stanbury committee. I would remind honourable senators that Senator Stanbury was a former President of the Liberal Party of Canada. Former Senator Stanbury is a very fine man. He was a minister of Mr. Trudeau. Mr. Blenkarn was a tough and absolutely perfect chairman. That is where I invented the word "jurisconsult". There was a big fight because they thought it was a French word. In fact, it is Latin. The debate, however, was about it being a French word. We had to agonize with that until we called in the jurisconsult from Quebec, Judge Marin. He was the jurisconsult at the National Assembly in Quebec. We then decided that it would be a jurisconsult.

If you go back 20 or 35 years ago, you will see that I often referred to the phrase, "You cannot legislate honesty." I am the person who published every section of the Criminal Code that applied to "crookery." If there are or if people think there are crooks in the Senate, let the Criminal Code deal with them, openly and publicly.

What prompted me to speak on this is because I was touched by what Senator Carstairs said. However, if I use all my energy in this debate, I may not have any left to speak on Bill S-3, and I tell Senator Poy I would do that either later this evening or tomorrow. I want to say openly that I was touched by what Senator Carstairs said. I do not deal from behind a curtain.

However, I do not know how I will vote. I may be fed up, but I know I will do my duty.

Senator Carstairs touched a subject that is very dear to my heart. She told us that she volunteers to speak to students. I have an old teacher on a contract at the moment, and he will work hundreds of hours for a limited amount of money. When I was chairman of members' services, I was known in the House of Commons as Mr. Scrooge by no less than Mr. Caccia. Every penny that we spend should be accounted for to the public. The minister does many good things for students, and she knows that I also meet with a lot of young people. Some people have said that I have spoken to no less than 50,000 young people in Canada in the last 40 years. It goes back so far that I was even a very nervous guest speaker in front of some teaching staff in Alberta, one of whom was Senator Carstairs when she was a teacher. That is going back a long time. At the outset, everyone was so nervous because they saw a "Frenchie" boy talking about the future of Canada and the monarchy. Everyone was nervous because there were bombs exploding here and there. I will brag, because no one will brag for me. I had the school in the palm of my hands at the end of the day. The minister witnessed that.

• (2110)

When Senator Carstairs said, "What am I going to say to young people?" I immediately said, "Yes, what am I going to say to people?" You see, I belong to the Trudeau school, without being a Trudeau-ist. I came under Pearson, but I am not Pearson, and I have seen all the others. I was with Senator Smith and Senator Grafstein as a Young Liberal 40 years ago.

Senator Carstairs was provoking me. What am I going to say to young people? I will say, "Do not worry now; we have a code of ethics." Boy, would they love it.

Mr. Trudeau always told us in national caucus and privately: "Be careful, there is always a smart one who may ask a second question." He would say: "Who appointed the ethics commissioner?" Of course, it has to be by Order in Council — so far, so good — but how did it come about? Well, it came about after close consultation with the leaders of parties in the Senate. I said, "Oh, my God, I can see myself sweating, having to tell the truth." Please, please!

You see I have no notes, so I say, please, can I have your indulgence for an old man, because I am going to need some energy later on tonight. I hope not.

What am I going to say? "Go, be happy, go away, now everything is going to be okay." It worries me, because someone is going to say, "Who is going to appoint?" Of course, someone has to appoint. I prefer the Prime Minister by Order in Council rather than a committee of eminent people. There is nothing that worries me more than this. In Quebec, as well as, I am sure, in other provinces, there is a kind of committee of three: one appointed by the government, one appointed by the assembly or the minister, and one appointed by the public. I have never been consulted. I am sure that no one here has ever been consulted when we appoint an eminent person.

I think I have solved that.

The second one, as I said earlier, before I was sidetracked, is close consultation and agreement by the leaders. I can see my students scratching their heads saying, "Wait a minute now, it is becoming friendly."

Third, we will write the ethics stuff, which we are told is a good sign and we should vote for it. After all, we have a kind of a veto on it, do we not, unless people are chosen by God? I do not know; maybe an independent or maybe a committee will draft the regulations.

I wish to say to Senator Carstairs that I think I have spoken to over 50,000 students in my 40 years in Parliament. I have spoken in over 300 places in Western Canada. It left me in this unbelievable corner here alone — however, by choice.

I want to make sure that I have the right answers when I get up to speak to the Commonwealth students society, here in this Senate on Monday night, because nobody wanted to show up. The Speaker asks us to speak to all kinds of national organizations. I love it, but I do not need to do it. I want to make sure that I have the right answers so that I will not be stuck by a wise kid who will start laughing, saying, "Oh, my God, it is great. At long last, I have confidence."

As you know, I will not say I am humble. I do not believe there is any aristocracy in this place. If there is to be one, I will be the one, and you will not accept it, and I will not accept anyone else.

I am tired of seeing some haughtiness. Now the problem is that I will have to wait in my office until 2 o'clock to correct what I have just said, so I will let it go.

Honourable senators, I think we should reflect. One thing is sure: We cannot legislate honesty.

For every one of us who is elected — the Canada Elections Act states that during the election you cannot promise anything to anyone, including a job to people. You may say to your campaign workers, "If I am elected, you will be my chief of staff." That is the way it happens. Yet, if you read the Canada Elections Act, it very clearly says that you cannot even do that much. Senator Smith is more of an expert than I. He nods and he appreciates what I am saying.

I do not know. I am in total confusion. I do not know how I will vote. That is what I wanted to say. I am still open to be convinced until the very end of the day.

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

Hon. Senators: Question!

[*Translation*]

The Hon. the Speaker *pro tempore*: It was moved by Senator Bryden, seconded by Senator Sparrow:

That Bill C-34 be not now read a third time but that it be amended

in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

20.1 The Senate shall, by resolution and with the consent of the leaders of all the recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11.

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

[*English*]

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore*: Those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

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

[Senator Prud'homme]

Is there an agreement?

Senator Stratton: I would like to defer the vote until tomorrow at 5:30 p.m. That is the standard procedure.

Senator Rompkey: Would it be agreeable to have a vote at 12 p.m., with a bell at 11:30 a.m.?

Senator Stratton: How about a 12:30 bell?

Senator Rompkey: How about a 12:15 bell?

Senator Stratton: What are you offering?

We all have problems. I would like to have it gone by 12:30, because then we have Royal Assent. It dovetails nicely that way.

Senator Cools: What Royal Assent?

The Hon. the Speaker *pro tempore*: Is it agreed that the vote will be at 12:30 and the bells will start ringing at 12:15?

Senator Rompkey: Twelve o'clock.

The Hon. the Speaker *pro tempore*: Is it agreed?

Hon. Senators: Agreed.

• (2120)

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—THIRD READING

Hon. Jack Wiebe moved the third reading of Bill C-37, to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased to have this opportunity to move third reading of Bill C-37, to amend the Canadian Forces Superannuation Act. I believe that this bill is about doing the right thing for our Canadian Forces. I want to take this opportunity to thank Senator Atkins for his comments in regard to this bill on second reading, and to thank him and all honourable senators for their support on this particular piece of proposed legislation.

An Honourable Senator: Question!

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

Motion agreed to and bill read third time and passed.

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

THIRD READING

Hon. Jane Cordy moved the third reading of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

She said: I will not speak very long, honourable senators. I just wish to say that I think this bill is extremely important. Whenever we can have a bill that will help the lives of veterans who have served our country, and their families, that is a positive thing.

I would also like to say that I was absolutely delighted, as I know everyone in this house was delighted, to receive the news release today from the Minister of Veterans Affairs to say that the VIP benefits would be extended to all of the eligible spouses, to receive lifetime benefits for housekeeping and for groundskeeping, so that there will not be a two-tiered delivery of benefits. I am very thankful to the minister, and I am sure honourable senators share that with me.

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

Hon. Senators: Question!

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

Motion agreed to and bill read third time and passed.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Jean-Claude Rivest: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker *pro tempore*: It is moved by the Honourable Senator Rivest, seconded by the Honourable Senator Keon, that further debate be adjourned to the next sitting of the Senate.

Will all those in favour of the motion to adjourn please say "yea"?

Hon. Senators: Yea.

The Hon. the Speaker *pro tempore*: Will all those opposed to the motion to adjourn please say "nay"?

Hon. Senators: Nay.

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

And two honourable senators having risen:

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

There will be a one-hour bell.

• (2220)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Forrestall	Rivest
Johnson	Robertson
Keon	Spivak
Kinsella	Stratton—9
Lynch-Staunton	

NAYS
THE HONOURABLE SENATORS

Bacon	Kenny
Banks	Kroft
Biron	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chalifoux	Milne
Chaput	Moore
Christensen	Morin
Corbin	Pépin
Cordy	Phalen
Day	Poy
Downe	Ringuette
Fairbairn	Robichaud
Fraser	Roche
Furey	Rompkey
Gill	Sibbeston
Grafstein	Smith
Graham	Sparrow
Hubley	Stollery
Jaffer	Watt
Joyal	Wiebe—42

ABSTENTIONS
THE HONOURABLE SENATORS

Cools	Prud'homme—2

[*Translation*]

Hon. Jean-Claude Rivest: Honourable senators, I will start by expressing my profound disappointment. This was my first adjournment motion, and it was defeated. I do not feel like ever trying again.

Our opposition to Bill C-49 on electoral boundaries readjustment reflects our commitment to what electoral law should be in a democratic society. You will all agree, I think, that in a democratic society, different opinions are expressed through the various political parties. The democratic playing field must be fair, level and, above all, result from a consensus between the parties. This is one of the great benefits of democracy in general, but also of parliamentary democracy.

• (2230)

Whether we are talking about electoral law, the Elections Act, the legal status of political parties, funding campaigns or political activities, I think one of the objectives of a democratic society has to be the following: all the parties, which represent the entire population by expressing divergent viewpoints, must be able, in an adult manner, to agree on the democratic process, whether in reference to parliamentary democracy or electoral democracy.

This tradition exists in Canada. It exists in each of Canada's provinces and is without a doubt one of the most eloquent illustrations of the strength and value of the quality of Canadian democracy.

I think that this bill, which is a unilateral move by the government, by a majority, breaks with tradition and calls into question our established democratic electoral practice. It is for this reason primarily that we must object to the route the government and its majority wants us to take and the procedure for adopting the new electoral boundaries that they have decided to impose on us.

It is not that the work of the commissioner in charge of readjusting electoral boundaries is being criticized — certainly not by us in any event; we recognize the value of the work that was done. It is in order to defend the value of this work that we object to the unilateral and surreptitious decision, taken in the particular interest of one group of Canadian citizens or one political party, for the benefit of the parliamentary majority in the House of Commons and the Senate, that although normally, by consensus and with the agreement of all political stakeholders, the electoral boundaries map should come into effect on August 25, 2004, this will not happen, for reasons that are undoubtedly legitimate, but nonetheless specific to the Liberal Party of Canada.

Honourable senators, how can Parliament as a whole be expected to ratify a bill that asks it to grant a "privilege", or at the very least a right, to the government majority, which is giving itself that right unilaterally?

I think that the boundaries redistribution process, which is also a very precious aspect of our democracy, was a gain. It did not just happen out of the blue. It was developed over time; I think it was Senator LeBreton, among others, who reminded us that a major breakthrough was achieved under the government of Lester B. Pearson. Pearson wanted to make sure that redistributions involving the individual interests of candidates or incumbents were carried out in an objective fashion, taking into account the broadest interests instead of individual interests. The process was therefore intended to be independent, to offer equal opportunity to all candidates in an election — which is a basic tenet of democracy — and to be transparent.

My colleague, the Honourable Senator Nolin, spoke about how important it was for the process to be transparent, and I see Senator Pépin nodding her head; she was no doubt impressed by Senator Nolin's speech. This issue should indeed be a concern of ours.

Honourable senators, how did this bill come before us this evening?

Someone somewhere has decided that the rules established by Parliament were no good, because events have taken place within a political party, namely the Liberal Party of Canada, which have precipitated things without the involvement or consent of the other parties in the democratic life of this country. Personally, I do not hesitate to say that, as far as the current Prime Minister of Canada, Mr. Chrétien, was concerned, he would have preferred the new electoral map not to become effective before August 2004, to allow him to decide for himself whether or not to go to the people to seek another term. Mr. Chrétien has said repeatedly, and rightly so, that he was going to finish his term. All the political parties, and all Canadians agreed that that was the way to go.

But someone somewhere has decided that his or her individual interests should take precedence over the wishes of the Prime Minister of Canada and the general consensus of Canadians about the electoral process, particularly the procedure prescribed in our legislation with respect to redistribution and the coming into effect of the new boundaries proposed by the independent commissioner.

The question then is who upset this consensus? Who was opposed to letting the Prime Minister of Canada do as he expected and finish his mandate and decide sometime in the fall of 2004 about his own future and the future of his party? Someone, somewhere, decided that his own interests were more important, and that Parliament and parliamentarians would obediently do as they were told, without discussion, to further the career aspirations of that individual.

Honourable senators, I do not mind individuals looking out for their own interests, which are no doubt quite legitimate and highly respectable but, in a democratic society, it is unacceptable for Parliament to obediently comply with one individual's personal schedule.

An Hon. Senator: What is the name of this individual?

Senator Rivest: I do not know; a number of newspapers indicate that this individual will be identified next week. I heard about a Ms. Copps. I do not know if she is the individual in question, but I do not want to personalize this debate any more than it already is. I heard that she could become leader of the Liberal Party of Canada, and that she would prefer to call an early election, after a convention in Toronto, apparently. This is what I gathered from glancing at the newspapers.

But if this woman wanted to become Prime Minister of Canada, she could perfectly well have respected the timeline of the government's mandate, as well as the wishes of the current Prime Minister of Canada. As a result, I do not want to say that Ms. Copps is the individual in question; perhaps it is someone else. I do not know yet. No doubt, we will find out who it is in short order.

No matter who it is, honourable senators, we oppose this bill essentially because it creates a precedent. I believe the same thing was tried in 1996.

• (2240)

Fortunately, thanks to the vigilance of the opposition, we managed to get the government to see our point and back down. Despite the temptation, the government did not want to be seen as being opposed to electoral law, which requires all political parties to give consent on something like this.

Once again, I do not want to question the motives of the present Prime Minister of Canada, for he was fully aware of the situation and wanted the electoral map to take effect in August of 2004. He was absolutely right in this, moreover. There is no urgency. Canadians have not been demanding any changes to the timetable, nor has the present Prime Minister. He has always said he wanted to complete his mandate. Canadians elected Prime Minister Jean Chrétien for a four-year mandate. Someone thought otherwise, which created chaos among the other political parties and led to this situation, unjustified as it is.

In closing, I will reiterate, on behalf of the Opposition in the Senate, our strong insistence that any decisions relating to electoral law continue to respect the sacred principle of electoral democracy and parliamentary democracy. Nothing is to be done without all-party consent. In short, the rules of democracy are not to be changed unless all citizens in a society agree, to ensure that the rules of democracy, the electoral rules, the rules on electoral funding, the election procedures and the rules on electoral boundaries are the result of consensus and a transparent and impartial process. This is exactly what we have achieved.

The commissioner has done his job. He listened to representations from all Canadians. He reached a decision independent of particular interests. However, someone else decided to put his own interests first — Mr. Martin, if memory serves correctly. He has specific electoral interests and is trying, with nothing to back him up except his parliamentary majority, to impose his own agenda on all the people of Canada.

It is my opinion that no Parliament can accept such a procedure. This is the reason for our strong objections to this bill.

[*English*]

The Hon. the Speaker: Senator Robertson will move to adjourn the debate, but some senators have questions. Unfortunately Senator Rivest's time has expired.

Senator Rivest: I would only request leave to continue for good questions.

The Hon. the Speaker: Is it a good question, Senator Smith?

Hon. David P. Smith: The honourable senator said several times, perhaps rhetorically, that someone, somewhere, decided that what is in this bill should happen. Who did that? He referred to matters like this being raised with all parties and being dealt with by consensus. Was the honourable senator aware that, when this matter was voted on at third reading in the House, his colleagues from the Progressive Conservative party supported it, with the exception of one member?

Senator Rivest: Honourable senators, I am aware that there is the House of Commons; I am also aware that there is a Senate.

Some Hon. Senators: Hear, hear!

Senator Rivest: This is a decision that we have to take as senators, as free senators.

Senator Smith: My question was: Was the honourable senator aware that his caucus colleagues in the Commons supported this bill, as did four of the five parties, save and except the Bloc? Did he discuss with them why they saw fit to join with four of the parties to pass this bill that affects the Commons?

Senator Rivest: I have a long tradition of being a dissident in my life.

[*Translation*]

Hon. George Furey: Where did the honourable senator get his information that the Prime Minister was not the one who decided to change the electoral boundaries?

Senator Rivest: The Prime Minister was not the one who decided to change the electoral boundaries. The Elections Act provides that, after an election, a commissioner must be appointed to see that changes in electoral boundaries are carried out according to a schedule contained in the act and known to everyone. It was expected that the new electoral boundaries would come into force on August 25, 2004. Someone decided that the change should happen earlier than the appointed date in order to serve particular electoral interests, perhaps those of Mr. Martin or Ms. Copps — although for Ms. Copps that appears not to be the case.

[*English*]

Hon. Tommy Banks: I have a good question for Senator Rivest.

I am a Western senator from Alberta. Even after the proposed redistribution, the average number of people in each constituency in Alberta will be approaching 107,000. In British Columbia, the average will be slightly higher than that. My constituents are anxious that that be changed.

It is not beyond the realm of possibility that Ms. Copps might call an election in, let us say, April or May. Do I take it that it would meet with the honourable senator's approval if I explained to the voters of Alberta that the Progressive Conservative Party objected to their having two additional seats in the coming election?

Some Hon. Senators: Hear, hear!

Senator Rivest: I just said that I would take only "good questions."

The Hon. the Speaker: I think, Senator Prud'homme, that Senator Rivest is finished with questions. Do you want to try?

Hon. Marcel Prud'homme: Honourable senators, I hope my question for Senator Rivest is considered a good one.

[*Translation*]

Honourable senators, as you know, the bill before us applies to a single election. This is somewhat troubling. The drafters of this bill should have asked for a permanent amendment. The Chief Electoral Officer will tell us, when he appears as a witness, that in his next report he will recommend that this one-year period be reduced, given what computerized systems can now do.

I do not understand why this bill would apply to a single election. It would be insensitive of a prime minister to call an election in April if he were not obliged to do so. According to the old boundaries, he need only wait until August.

[*English*]

I will continue in English for those who may not understand. It is true that Alberta is short-changed. In fact, the electoral map short-changes British Columbia and Alberta. That is because Saskatchewan should have only 10 seats and Manitoba should have only 11. Everybody points the finger at Quebec, but Quebec is not responsible because the Atlantic provinces should have 21 seats, but they have 30. They have 30 senators.

• (2250)

If you were to see a electoral map by population, you would see that two provinces in Western Canada have too many seats and two provinces are short-changed. Quebec has almost the correct number of seats, less two, but you would see that the Atlantic provinces have —

[*Translation*]

Would the honourable senator have been more comfortable if the amendment had been permanent rather than exceptional, as Senator Nolin said, and only for this election?

Senator Rivest: Senator Prud'homme is absolutely right. This proves the truly specific nature of this legislative intervention. It is also a departure from established electoral practice and the way electoral law should be applied. We are being asked to pass a bill whose sole purpose is to address a specific political situation.

This is a precedent. Other political parties will be faced with other specific political situations. One could wonder whether Parliament will adopt bills to suit the specific interests of a particular political party. Right now, we can assume that the Liberal Party of Canada has an interest because it surreptitiously decided to change prime ministers.

[*English*]

Hon. Brenda M. Robertson: I move the adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Robertson, seconded by the Honourable Senator Forrestall, that further debate be adjourned until the next sitting of the Senate.

Will those in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

Motion agreed to and debate adjourned, on division.

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Wilbert J. Keon: Honourable senators, I rise to complete my remarks on Bill C-13, the assisted human reproduction act. You will recall on Tuesday last, I spoke to this bill and outlined the need for the legislation, including the historical evolution. I spoke to the central purpose of the bill and to the principles involved, and, indeed, all of those remarks were very positive as they related to the bill.

I also spoke to the prohibitions in clause 5 and paragraphs (a) to (j), again, all of which are necessary and positive.

I began to move on to clause 6 and the clock stopped me.

I will speak briefly about clause 6, which states:

> No person shall pay consideration to a female person to be a surrogate mother, offer to pay such consideration or advertise that it will be paid.

There is a problem with this, honourable senators, because paid surrogacy is not permissible under the bill. However, the bill goes on to allow for payment for certain receipted expenses. An amendment added at report stage allows a surrogate mother to be compensated for lost employment income, if she is unable to continue working during pregnancy for health reasons.

There is a contradiction that needs to be resolved, and this amendment also stands in direct contrast to the proposals made by the Commons Standing Committee on Health in 2001. Its report recommended a ban on any financial compensation to surrogate mothers and approved surrogacy under only purely altruistic circumstances. That stand was made on the ground that paid surrogacy commodifies the reproductive capabilities of women by saying that it is illegal. By allowing payment in certain circumstances, the bill now before us does not take a clear position on this matter either way and opens the door for compensation of surrogate mothers. This will have to be clarified along the way, I believe, in committee or elsewhere.

I now turn to stem cell research, which is a truly controversial part of this bill. Stem cell research advocates claim this methodology has the potential to revolutionize the management of disease. There is no doubt about that. Disorders now being studied in this regard include diabetes, heart disease, Parkinson's disease, liver diseases and arthritis. The list goes on. It is perceived as the light at the end of the tunnel.

Embryonic stem cell research would be permitted by the agency as long as they are surplus embryos created in in vitro fertilization. On this same issue, just because an embryo is considered surplus does not negate the fact that it was originally made for reproductive, not research purposes. There are some who believe that embryo adoption by infertile couples could deal with the issue of surplus embryos. Of course, many would not feel comfortable allowing other people to raise their genetic children. However, Canadian families should at least have the option to donate their surplus embryos to create other families.

That is perhaps another matter that must be examined in committee. One also has to ask why so many surplus embryos are created in the first place.

The second criterion for embryonic stem cell research to be permitted is that the owners have given written consent and scientists have proved that the research is necessary. This also is an issue that requires further clarification. Just how necessary is not stated, and this is very vague, as outlined in the bill.

Some favour embryonic stem cells since they are considered easier to reproduce and manipulate in the laboratory, and adult stem cells are not. There appear to be no reasonable objections to adult stem cell research, but it certainly is not as fruitful at this point in time.

"Embryo," as defined in this bill, means a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived through such an organism that is used for the purpose of creating a human being.

Going back to clause 5(*d*), it states that:

> No person shall knowingly
>
> maintain an embryo outside the body of a female person after the fourteenth day of its development following fertilization or creation, excluding any time during which its development has been suspended.

Now herein lies the dilemma, because many people feel that a 14-day embryo is a human being. I have received large amounts of correspondence on this issue. More came in today from some religious orders, et cetera.

However, it is safe to say there is really no agreement on this matter.

In extracting the stem cells needed for research, the embryo is destroyed. For this reason, some people equate stem cell research with abortion. Alternatively, some see this type of research as a means of providing a cure for any number of diseases or serious injuries. Canada has been leading in stem cell research, with the stem cell network formed in 2001, a federal government network of excellence involving more than 60 top scientists across the country. These scientists feel strongly that embryonic stem cell research is necessary. They are also concerned that, if it is not allowed, they will fall far behind other research being done in various parts of the world, such as Britain, where the laws are liberal, and the United States, where embryonic stem cell research can be done in private laboratories. In the United States, embryonic stem cell research is not funded by NIH, the National Institutes of Health. You are not allowed to do it in a government-funded lab, but you are allowed to do it in a private lab. American scientists had an opportunity to do it because of those circumstances.

• (2300)

Others explain that the evidence justifies the use of adult stem cells only at this point in time and that there is just not enough known about the whole field to take that giant leap into sacrificing embryos or stem cells. We have a major difference of opinion here.

Turning now to the governing agency, in principle there is tremendous support for this governing agency. I believe that everyone feels that it is necessary. The objectives of the agency are to protect and promote the health, safety and the human dignity and human rights of Canadians and to foster the application of ethical principles in relation to assisted human reproduction, another matter to which the act applies.

The assisted human reproduction agency of Canada would be established, something first proposed in Patricia Baird's report following the royal commission. The agency would be separate from Health Canada but would report directly to the Minister of Health, advising on related issues. It would provide licences to clinics and researchers conducting activities as regulated under the legislation.

There are many relevant issues here that will have to be considered in committee. For example, can this agency be truly independent if it directly reports to the minister? Also, should the agency be required to have a certain number of women to sit on the board, as women are most directly affected by the assisted reproduction techniques? What is the agency's relationship to the Canadian Institutes of Health Research? Are stem cell research guidelines in the review process? There is also concern about the privacy issue relating to the role of the agency.

While there are some questions about the agency, I personally do not have serious problems with this agency. I must say the correspondence is generally supportive of it and there definitely is a need for it.

I will summarize and paraphrase, because the hour is late. The next major issue is the privacy issue. There will be a tremendous amount of data collected by the people involved in this business. It is going into a data bank, and people are deeply concerned about the integrity of that data bank. This has really not been carefully defined at this point in time. It needs a little further definition and clarification, but I do believe it is possible. It is also possible to put firewalls into data banks that can protect people.

While there is no consensus about the merits of every part of this bill, we have a responsibility to understand it and how Canadians will be affected and protected by it on a short and long-term basis. Having done that, we can act with conviction. Consequently, I look forward to gaining a fuller knowledge about this matter in committee and from some of the other speeches that will be heard along the way.

I must say that, at the outset, there is a tremendous wish on the part of the scientific community to have this bill passed. The word got out that I had some reservations about it, and I have been inundated with mail and telephone calls, and so forth, asking me to get on with this because it has been in the pipe for 10 years. People are deeply concerned that there are components of this bill that should have been passed a long time ago.

I recall an analogy to the abortion bill that came here when I first came into the Senate. It just seemed that there was too much in the bill. This one seems the same. There are things that everybody wants included. If we had had two or three bills, it would seem a lot simpler than just one.

Hon. Mira Spivak: Honourable senators, this is the first bill on assisted human reproduction to reach us, but it is not the first time that this chamber has debated the need for legislation. Fourteen years ago, the government of Brian Mulroney created the Royal Commission on New Reproductive Technologies. The commission was charged with investigating technologies that existed at the time and was considering what could be available in the future. Most important, the commission's task was to recommend a Canadian course of action.

The royal commission spent four years and some $28 million charting the science and medicine available to infertile couples. It looked at the social, ethical, health, research and legal implications of new technologies and it synthesized the values of Canadians in what is often portrayed as a moral and ethical minefield. Its report, "Proceed with Caution," is germane to this debate. However, that does not mean that the legislation should be 10 years in the making.

I am disappointed that this bill comes so late in the session. I assume we will not be able to go through the process that it really needs to go through, and the bill may die.

The commission spelled out activities that were, and are, clearly unacceptable to Canadians: sex selection of babies for non-medical reasons or turning human eggs or sperm into commodities by profiting from their sale. To those unacceptable practices, we can now add human cloning and the creation of human-animal hybrids that Canadians have clearly found repugnant.

The royal commission advised the government to create a national reproductive technologies commission to licence and regulate research, sperm banks, infertility clinics and other services. It said specifically that there is a need for urgent action in a rapidly evolving technological field, for comprehensiveness and similarity of approach across the country, and for public accountability in managing the technologies.

As Patricia Baird, former chair of the royal commission, wrote two years later:

> Not to do anything *is* a policy; it will mean the market will drive the availability of various technologies. Once the market has established itself, it will be a very difficult situation to retrieve.

Ten years down the road, we are seeing evidence of that.

This chamber also felt a sense of urgency. Some of you will recall the debate we had five years ago on a motion urging the government to create the national body that the royal commission recommended. We approved the motion unanimously in June of 1998.

I am pleased that at last we have a bill that would create, if not precisely that national commission that the Baird commission proposed, at least some form of national agency. We also have a bill that would ban human cloning, sex selection and payment for sperm, eggs and surrogate mothers. It is welcome legislation, and it is long overdue.

Having said that, in several respects it is not the bill that flows naturally or logically from the four years of work of the royal commission, nor is it the bill that a committee in the other place recommended after hearing from more than 200 witnesses and receiving more than 400 written submissions. As happens all too often, the committee did its work and adopted amendments to improve the bill, only to see them reversed at report stage.

The bill before us does not follow the advice of the House of Commons standing committee nor that of the royal commission on the composition of the all-important new agency. The royal commission recommended a 12-member board and, recognizing that it is women's bodies that are most often subjected to invasive procedures, proposed that women compose a substantial portion of the board members — normally at least half. The standing committee proposed a 50 per cent minimum, but the bill before us is silent on that point.

• (2310)

The standing committee recommended strong conflict of interest clauses to ensure that the public interest rather than the for-profit interests dominate more decisions. The bill we have contains a watered-down version. Licensees and shareholders of for-profit clinics cannot be appointed, but industries that supply products and services can have their people on the board.

In the very delicate matter of donor identity, the bill does retain a committee amendment. It allows the new agency to give a doctor the identity of a sperm or egg donor to help the doctor deal with a medical problem. However, it does not give the same rights of disclosure to people conceived through assisted technologies. It attempts a balancing act. Is the balance right? I hope this is one area our committee will investigate.

No doubt, our committee will also confront the ethical, moral, and practical dilemmas posed by the various clauses that would allow the use of embryos for training in medical research. Some Canadians, as Senator Keon has suggested, are deeply troubled by the use of embryos for stem cell research. Others believe the research offers hope for people with chronic diseases. This bill puts constraints on the agency's ability to licence that research. Are they sufficient? The standing committee is an excellent place for a review of that aspect of the bill.

I would note, however, that at the United Nations, an international coalition of at least 66 scientific organizations, including the U.S. National Academy of Sciences, has endorsed a ban on human reproductive cloning, but has urged the United Nations and national legislatures to permit therapeutic cloning, which is basically embryonic stem cell research as I understand it, citing its considerable potential for scientific research.

While the Senate committee does its work, there are two important things to remember. In the absence of any control, research on human embryos is being conducted in fertility clinics. In fact, according to news reports, it is common practice in clinics. In their efforts to improve success rates there is also a grandfather clause in this bill. It frankly encourages research today by exempting anything that is done before the regulations are enacted.

Much of this bill requires a great deal of regulation, as do so many other bills brought before us in recent years. As legislators, we are increasingly asked to approve empty shells and to trust public servants and cabinet to fill them appropriately. I have a great deal of difficulty with that trend.

This bill proposes something of a compromise. It requires that regulations, with some exceptions, be laid before both Houses. It makes clear that committees may review these regulations, the minister must take into account the report of the committees, and if he or she does not incorporate a committee's recommendation a statement of reasons must be given. This is a good start in reducing the democratic deficit that has grown wide in Parliament.

Still, there are two lacunae in this bill. First, nowhere does the bill incorporate the precautionary principle that common sense tells us should apply in this field and, second, it virtually omits an area of research, public information and education that the royal commission considered vital. I refer to infertility prevention. Ten years ago the commission conducted the first data collection and research into the prevalence of infertility. It reported that 7 per cent of Canadian couples of reproductive age were infertile.

This year, in the other place, various new figures were presented. The parliamentary secretary to the health minister suggested that one in eight Canadian couples now has to deal with infertility and the rate is rising. It is a troubling statistic — from 7 per cent a decade ago to 12.5 per cent today. When asked for supporting evidence, the government does not readily have it. It has no recent studies. It relies on some provincial data and extrapolation of rates in other countries. The one-in-eight figure is the "generally accepted" one. Accepted perhaps, but is it acceptable to the next generation of young people who hold parenthood as one of their fondest expectations?

Are today's estimates accurate? If so, what is causing this rise in infertility? The royal commission identified several preventable causes of infertility: sexually transmitted diseases, maternal age, smoking and exposure to harmful agents in the workplace and in the environment.

In the last decade, scientists have learned a great deal about chemicals that can severely affect reproductive systems and reproductive ability — the so-called endocrine disruptors. These chemicals are everywhere — in our homes, our workplaces and in our waterways. We are not educating people on how to limit their exposure, nor are we taking regulatory action to remove them from our environment.

Ten years ago, the royal commission made infertility prevention a priority. It called for a national prevention strategy and recommended that a subcommittee of the national body be specifically assigned to address it through research, education and regulation. The bill before us only glances at that important issue. As an afterthought, it requires the new agency to provide information to the public on the act, its regulations and "risk factors associated with infertility." That is far less than the royal commissioners had in mind.

Ten years of leaving it to the marketplace has had the predictable outcome. Infertility prevention is in the public interest. Infertility treatment is profitable. Our resources have been directed to the profit centres. Personally, I would like to see a far stronger prevention role for the new agency through this bill.

Ten years after the royal commission report there is understandable concern, even anxiety, that unless we quickly pass this bill Canada will face more years of a freewheeling unregulated marketplace. It is hard to disagree with Patricia Baird, former head of the royal commission, who a few months ago wrote:

> It is much more important to get regulatory oversight established than to delay over particular specifics.

As the clock winds down in the other place, we could be tempted to think we have a Hobson's choice. However, when asked about this legislation, the prime-minister-in-waiting publicly said he supports it and is prepared to pursue it in the future if necessary.

With that assurance, I hope this chamber will take the time it needs to apply its wisdom to this bill. I hope our committee will hear from many witnesses. I look forward to following the deliberations and I hope this chamber can address the bill's remaining deficiencies in an effective manner.

Hon. Douglas Roche: I rise to speak on Bill C-13, which provides for regulation of the practice of assisted human reproduction and related research. This bill aims to fulfil a long-standing regulatory and legal vacuum to govern activity in a rapidly changing sector of health research and practice, and to protect the interests of Canadians who use assisted human reproduction services.

The principles set out in clause 2 of the bill are indicative of these laudatory intentions. The health and well-being of children born through this system are to be given priority. The benefits of technology and research are not to override human rights and dignity. The interests of women must be protected in recognition of the increased impact these regulations will have on them, and human individuality and diversity must be preserved. I believe these principles enjoy the support of the majority of Canadians.

• (2320)

The remaining 76 clauses of the bill set out to give substance to these principles. Substantial prohibitions are applied to human cloning and the creation of animal-human hybrids; a national agency is created to license and regulate the assisted human reproduction industry to ensure quality control and replace a system of voluntary adherence to ethical standards with an enforceable code of conduct; restrictions are enacted on a number of controlled practices, including the use of embryos for research purposes; and children born using assistive human reproductive procedures are given access to the medical histories of their biological parents. All this is to the good.

Essentially, this bill attempts to apply Canadian values to the shifting contours of modern technology, which is evolving today at an unprecedented pace.

One of the new frontiers in health research, and an area where the potential rewards of research must be balanced by ethical concerns, is stem cells. These cells have the unique capacity to duplicate the functions of a variety of different body cell types and could revolutionize the treatment of chronic diseases such as cancer and diabetes. Research has proceeded internationally on stem cells drawn from two sources: adults and embryos. Some claim that research must continue on both fronts to maximize results. However, the evidence indicates that adult stem cells are more promising than their embryonic counterparts. Studies in Australia and Germany confirmed in October of this year preliminary success in using adult stem cells to fight heart disease. Recent research by Dr. Catherine Verfaille at the University of Minnesota, showing that adult stem cells are capable of adapting to every type of cell in the body, dramatically expands the potential uses of these cells.

Extensive research on embryonic stem cells, which in the U.K. has resulted in the killing of 40,000 embryos, has yet to yield similar results. Moreover, since they can be harvested from the patients themselves, adult stem cells avoid the immune rejection problems associated with embryonic stem cells.

Aside from the scientific limitations, embryonic stem cell research has serious ethical implications for many Canadians. This is because harvesting embryonic stem cells unavoidably results in the death of the embryo, which is recognized by many as the end of a human life.

It is interesting to note that the bill itself defines an embryo as a "human organism." Furthermore, it is important to recognize that the treatment of embryos in this instance differs significantly from the considerations involved in the controversial issue of abortion. Instead of compromising the rights of the unborn in deference to their mothers, as does abortion, embryonic research introduces a third entity to this scenario — the researcher. According to this bill, barring interference from the donor, the rights of researchers to experiment also take precedence over the right of the embryo to live.

Proponents of this bill argue that these so-called surplus embryos created initially for reproductive purposes would eventually be destroyed in any case and that it only makes sense to derive some research value from their brief existence. However, given the current national shortage of embryos fit for research, there will be a strong incentive to create more embryos than necessary when conducting in vitro fertilization in order to have the surplus available for research. Instead of providing protection to unborn Canadians, this bill further devalues their lives by subjugating their right to live to the rights of scientists to conduct research which, in light of the promising alternative of adult stem cell research, is unnecessary.

A Leger poll of 1,500 Canadians conducted in October of this year found that only 21 per cent believe the use of embryos for stem cell research is acceptable, while 33 per cent said it is unacceptable and 37 per cent preferred that alternative sources of stem cells be used.

A clear majority — 70 per cent — of Canadians prefer that stem cells not be taken from embryos. While other polls have given different results, it should be noted that this poll made specific mention of the harm done to embryos from harvesting stem cells and the existence of an alternative source. When in possession of these facts, Canadians clearly rejected embryonic stem cell research.

Proponents of the bill argue that something is better than nothing, that establishing some guidelines is better than having none at all. I agree, but this argument ignores a third option — better guidelines. What prevents us from prohibiting the use of embryonic stem cells for research? Even the bill's proponents admit that there are currently only about 10 embryos in the entire country that meet research standards. Meanwhile, the research potential of adult stem cells demands our undivided attention.

Eliminating the use of embryonic stem cells also removes the divisive ethical issues surrounding the status of embryos as human beings from the equation. We can avoid putting Canadians who suffer from chronic disease in the difficult position of choosing between valuable treatments and upholding personal moral principles. Finally, Canadians themselves clearly support the use of alternative sources. If the government is interested in passing this bill and minimizing opposition to it, an amendment prohibiting embryonic stem cell research is one improvement that would go a long way.

While the lack of protection for embryos is the most fundamental concern I have with this bill, another serious issue that merits consideration is the lack of appropriate conflict of interest provisions for the proposed assisted human reproduction agency. This agency would be charged with issuing licences to medical practitioners involved in research and service delivery related to assisted reproduction. The agency would also be obliged to fill in the gaps in the regulations outlined in the bill. Since the bill defers to the regulations for details in no less than 28 clauses, the role of the agency will be an important one. In spite of this, the conflict of interest guidelines currently permit representatives of biotech and pharmaceutical firms with a clear financial interest in the conduct of this research and the regulation of it to sit on the board. Essentially, these firms are being invited to regulate themselves. This is a recipe for disaster.

We are all aware of the litany of allegations currently in circulation related to conflicts of interests involving public figures. Even if such allegations are untrue, the mere fact that they are advanced undermines public trust in the institutions of governance. In this case, the appearance of conflict of interest could damage the trust that assisted human reproduction clients place in the very institution charged with protecting their safety and interests.

A realistic survey of Bill C-13 must consider both the strengths of the bill in providing badly needed regulation to the AHR industry and its weaknesses in failing to make these regulations effective and appropriate.

The Canadian Conference of Catholic Bishops captures the ambivalence felt by many Canadians toward this bill when it states that, "while there is much that is positive in the bill, it is also deeply flawed." On the other hand, proponents of the bill, including the 65 health care academics and ethicists who signed a recent open letter on Bill C-13, cite the urgent need for regulation in the field and note that, "given political realities and history, if we do not get this legislation now, we won't get any for a very long time" if ever.

Let us not forget that often the political reality is what we make it. In focusing on the alleged dichotomy between this bill and no bill, we risk ignoring a third and much preferred alternative — a better bill. Given the importance of this bill, not only to consumers of AHR services but to all Canadians, every effort should be made to construct legislation that is effective and approaches consensus as closely as possible.

However, extensive efforts to improve this bill over the last few years have met with minimal success. In every case, the government has refused to incorporate substantive changes. It refused to issue a comprehensive response to the work done by the House Health Committee on the draft legislation, and it overturned all three of the substantive amendments the committee made to Bill C-13.

• (2330)

The government also ignored numerous requests to split this bill, separating human cloning and AHR legislation from the more controversial aspects related to embryonic stem cell research. If the government was primarily interested in passing urgently needed legislation to protect AHR consumers as quickly as possible, it could have bypassed significant opposition to the bill by separating these elements. Instead, the government has opted to push the bill ahead, over the objections of the health committee and many of its own caucus members.

The absence of due consideration of the bill's potential weaknesses makes it essential that the Senate exercise its role as the chamber of sober second thought with particular care in this instance. If the bill is unclear, or has unforeseen implications, the government does a disservice to the very people it is trying to protect — those seeking assistance with reproduction. That is why, honourable senators, it is of fundamental importance that this bill receive a thorough analysis in committee, which addresses all points of view and considers all aspects of what is a very complicated piece of legislation.

While regulation in this area is urgently needed, the subject matter of this bill is too important to push through a set of ill-considered guidelines. Deeply held ethical principles are at stake.

Hon. Yves Morin: Honourable senators, first, I would like to congratulate Senator Roche. I think that was a very thorough study. I have a question for him. I realize and I respect his opinion that he is opposed to research of embryos; many Canadians are. However, the fact remains that research on embryos has now been conducted for more than 20 years in fertility clinics. In fact, in vitro fertilization is absolutely impossible to perform without research being done on human embryos at an early date. It would be extremely difficult to divide the bill between embryo protection and reproductive technology regulations because embryos are used for teaching, for quality control and for research. If this were not permitted, we would have to close fertility clinics because, as I stated, in vitro fertilization cannot be performed without research.

The other issue is that stem cell research, for some reason, has taken over. Up to now, no embryo has been used for stem cell research. Stem cell research will be conducted mainly on existing lines that have been created outside the country. I would like to point out that virtually all of the 65 researchers of the Canadian stem cell network, without exception, feel that both embryonic and adult stem cells must be used.

I realize that for some Canadians — and, as I said, I completely respect that — embryonic research is not acceptable, even at a very early stage when cells are not differentiated, when it has less than 150 cells. I respect that. However, for some reason — and I know why — it is easier to hit on the mad scientists in the lab, you know, the Frankenstein doing stem cell research, than it is to hit and close fertility clinics. The opponents of embryo research are surprisingly silent on the subject, and I know why. As has been stated, 15 per cent or one in eight women are infertile and, with reason, want to have access to fertility clinics. If we really were opposed to embryonic research, we would have to close down all the fertility clinics in Canada, which is absolutely unacceptable.

The Hon. the Speaker: Honourable senators, unfortunately there is an expiration of Senator Roche's time.

Senator Roche: Might I have leave to continue, honourable senators?

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

Hon. Senators: Agreed.

Senator Roche: I would like to make it clear that I do not want to hog the time at this hour, but I will certainly respond to Senator Morin, and I begin by paying my respects to him as an eminent physician.

I am afraid we just do not agree on the necessity of embryonic stem cell research. As a matter of fact, in my speech — and this is a truncated version I gave of my speech — I tried to set out evidence that adult stem cell research is more promising for the cure of degenerative diseases than embryonic stem cell research. Second, it is a fact that the embryo is recognized as a human organism, a human being. I think that if we are to countenance research on even putative human beings, it creates immense ethical problems.

Having said all that, I recognize that the committee ought to thoroughly explore these issues in order that the best bill possible can come forward. I recognize that while the bill is flawed, in my view, it is presented by some as being the best obtainable. I think it can be improved to reduce the ethical lapse that is presently in the bill.

The Hon. the Speaker: Did you want to adjourn, Senator Kinsella, or to speak? Senator Corbin has withdrawn his question.

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, I want to participate in the debate at second reading. Therefore, I will move the adjournment of the debate. It is too late and I am very tired, but I will speak very soon. I think the bill should move off to committee.

On motion of Senator Kinsella, debate adjourned.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE THE COMMITTEE TO STUDY DOCUMENTS PURSUANT TO THE CANADA NATIONAL PARKS ACT

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

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

> That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the documents entitled: "Banff Community Plan"; "Field Community Plan, Yoho National Park, July 1999"; "Jasper Community Land Use Plan, Jasper National Park of Canada, 2001"; "Lake Louise, Banff National Park of Canada, Community Plan, June 2001"; "Wasagaming Community Plan"; "Waterton Lakes National Park: 2000 Waterton Community Plan"; "Waskesiu Community Plan" and "Order Amending Schedule 4 to the Canada National Parks Act", tabled in the Senate on November 6, 2003 (Sessional Paper No. 2/37-795), pursuant to the Canada National Parks Act, S.C. 2000, c. 32, sbs. 34(1).

PRIVACY COMMISSIONER

NOTICE OF MOTION TO APPROVE APPOINTMENT

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

> That in accordance with Section 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

• (2340)

[*English*]

Hon. Marcel Prud'homme: Honourable senators, it is good for the deputy leader to have asked for permission. When permission is given, it is like a blank cheque.

Senator Carstairs: It is a notice.

Senator Prud'homme: I know it is only notice. We could have been given something on which to reflect. We could have refused permission. I was curious because I thought it was something new. I find it unbelievable that, at this late hour, we are being asked for our permission to revert to government business. The surprise is that it is so a matter of substance. Could this not have been done a little bit earlier so that we could decide whether to give consent? We are giving consent to something we do not know about.

I know it is not exactly a point of order but, for the future, if there are to be other, similar surprises, perhaps they could be raised during the daytime, when people may give the matter some thought. To give notice at this hour to deal with the Privacy Commissioner's term of another seven years is not proper. However, I am sure Senator Kinsella and I will support that. We will have her appear before the Senate. However, this time we will be more careful. We may vote again, or we may not.

I want to register my surprise, honourable senators, that, at this late hour, near the end of a very long week, we are faced with this notice. My comments are on the record, and I may use it, if this situation arises again. We will, undoubtedly, have the usual request of the Honourable Senator Kinsella to have that witness appear before the Committee of the Whole.

PUBLIC SAFETY BILL, 2002

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, as promised, I am ready to speak.

I have made sure that my remarks do not exceed the time allotted me, which is unlimited. I am willing to make those now, but in view of the hour, honourable senators may prefer that I speak tomorrow instead. I am in their hands.

Very well, I will carry on. I am always in a cooperative mood when it comes to working with the government side.

Senator Stratton: Even I cannot keep a straight face on that one.

Senator Lynch-Staunton: This Bill C-17, as the Leader of the Government has already pointed out, amends 23 acts of Parliament and introduces a new one. I will not get into the debate today about the long title of this bill — my point about titles of bills has been made over the past week — but I will say that Bill C-17 is a huge bill, affecting many facets of the lives of Canadians that are once again not reflected in this long title.

The Senate should take considerable time to examine this bill to ensure that the privacy rights of Canadians are balanced with the security needs of the country.

This is the third attempt of the government to introduce this proposed legislation. Despite changes to the bill each time it has been reintroduced, there remains considerable concern about privacy and about the powers that are conferred upon ministers to act arbitrarily, with little parliamentary oversight.

I will deal first with issues that concern privacy.

Part 1 deals with amendments to the Aeronautics Act, to enable the minister to make security measures relating to aviation issues. The bill enables the Minister of Transport, or a person designated by him or her, to request information on passengers from airlines or aviation reservation systems if there is an immediate threat to that flight. The information can be shared with the RCMP, CSIS, the Minister of Citizenship and Immigration, the Minister of National Revenue and the CEO of the Canadian Air Transport Security Authority.

During debate in the other place on the provision of data, there was discussion about the words "any flight specified" and whether that meant data from one specific flight or a continuous feed from all flights. Government officials confirmed that the intention of this clause of the bill was to enable a continuous data feed from all flights. Honourable senators, we will have to look carefully at the proposed section 4.82 of this bill to ensure that we are not allowing greater access to Canadians' private information than is absolutely necessary for security reasons.

Concerns have also been expressed about the privacy of the data collected by the government in the name of aviation security. Data collected from airlines and aviation reservation systems is to be destroyed within seven days unless it is required for investigations of threats to national security. The commissioner of the RCMP and the director of CSIS are required to review all information retained beyond the seven-day period at least once a year and order its destruction if it is no longer needed for transportation or national security purposes.

A record must be kept setting out the reasons why information is being kept, but what is not clear is whether any of the review agencies or civilian oversight agencies, like the Security Intelligence Review Committee, will be able to review these records to determine if the information retained is really required to be kept. There is no provision for report to Parliament on data that has been retained longer than seven days.

Other countries will be able to receive lists of passengers on flights departing from Canada or on a Canadian airline aircraft if the flight is scheduled to land in that country. In effect, we will be providing information to other countries about passengers that may or may not be Canadians. As well, the bill is silent as to how long foreign countries can keep this information.

Under the National Defence Act clauses of this bill, a person designated by the Minister or the Chief of the Defence Staff can intercept any private communication that transits through the department's computer systems. The objective of the amendment is to protect the department's computer systems and networks. However, the provisions of the bill enable secret interceptions, and the authorizations to intercept are not subject to the Statutory Instruments Act or parts of the Criminal Code that prohibit the interception of private communications.

The Commissioner of the Communications Security Establishment is charged with reviewing activities carried out under an authorization to ensure compliance with the law, and the report is made annually to the minister but, again, there is no requirement to report to Parliament.

The second issue I want to raise is the incredible power that this bill gives to ministers of the Crown under the rubric of interim orders. The Leader of the Government has stated that only matters that can be covered by interim orders are matters for which Parliament has already given approval in the regulation-making scope of the acts in question.

The orders come into effect immediately, but must be approved by the cabinet within 14 days, tabled in Parliament within 15 days, and published in the *Canada Gazette* within 23 days. In effect, the minister has complete power for two weeks through interim orders before cabinet has to approve them, 15 days before Parliament gets to see them, and 23 days before the public is notified.

Interim orders are exempt from sections 3, 5 and 11 of the Statutory Instruments Act.

Section 3 of that act allows the Clerk of the Privy Council and the Deputy Minister of justice to examine proposed regulations to ensure that, and I quote from section 3(2)(*b*):

> it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

and

> (*c*) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*...

This bill could trample on the basic rights and freedoms that are constitutionally guaranteed to all Canadians, at the whim of a minister, with virtually no checks and balances on that power.

The member for Mount Royal noted in the other place, in the examination of an earlier version of this bill, that the bypass of the Statutory Instruments Act means that the security and screen filter, the filtering out of objectionable features before the regulations are enacted, is absent.

• (2350)

What is objectionable to bringing in these new powers is that we already have an Emergencies Act that enables the government to react to emergencies and be accountable to Parliament and Canadians for their actions. The Emergencies Act spells out the powers of Parliament to review, amend or revoke orders or regulations that are brought in to deal with the emergency. These orders or regulations must be brought before Parliament within two days of being made, where they are debated and voted on. In contrast, interim orders under Bill C-17 are tabled in each House of Parliament, but there is no requirement that Parliament actually debates, amends or approves the orders.

There seems to be an argument that interim orders complement rather than replace the Emergencies Act. Does that mean we have degrees of emergencies? If so, what constitutes an emergency that requires the Emergencies Act, and what constitutes an emergency that requires interim orders? Who makes that decision, and what are the criteria for the determination? The difference is that the Emergencies Act provides for parliamentary oversight; interim orders do not.

Finally, I want to comment about our fight against terrorism. Terrorism threatens the fundamental freedoms of Canadians, and we must do everything we can to fight it. Our own Standing Senate Committee on National Security and Defence, in their outstanding work over the past two years, has noted that Canada must be able to defend itself. This means resources and investments. It means ensuring our military, our Coast Guard, the RCMP and CSIS are funded at an adequate level. That also means coordinating our efforts with all those committed to that war — because that is what it is, a war against terrorism — and particularly with the United States.

Nonetheless, honourable senators, we must be careful about bringing in new laws that could threaten the basic freedoms that make Canada what it is. Bill C-17 adds to the arbitrary power of government without the checks and balances to ensure that privacy rights are protected. Latitude allowed under interim orders is excessive and contrary to basic values.

I have touched only on a few of the anxieties Bill C-17 raises, noble as its purpose may be. Bill C-36 was twice given thorough study by the Senate, and I suspect that its cautious application to date, in large part, is a result of the many concerns raised here on all sides. Now I trust a similar approach will be taken on Bill C-17 in committee to allow a similar result.

On motion of Senator Forrestall, debate adjourned.

[*Translation*]

THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I rise on a point of order. It is 11:55 p.m. If we tackle one of the following points on the Order Paper, the debates will be quite vigorous. I think it would be better to stop now.

Senator Kinsella has indicated that he is tired. I know he would like to participate in the next debate because it is on a motion of some importance to him. I wonder if it might be preferable, in a gesture of cooperation to adjourn now. We could continue but the disorder would only last five minutes.

I appeal to Senator Robichaud, an understanding man, who knows that at this late hour it is not a good idea to get bogged down in weighty debates. Moreover, Senator Lapointe has asked me to have an item that is important to him stand in his name. The other item is one on which I wish to speak, of course. I said that I would speak but I will certainly not do so at this late hour.

[*English*]

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003— REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the consideration of the seventh report of the Standing Senate Committee on Human Rights (fact-finding mission), tabled in the Senate on November 4, 2003.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I think I found myself at this very point at this very time, 24 hours ago.

Senator Robichaud: We want a repeat performance.

Senator Kinsella: No, no. I want to compliment our colleagues who paid the visit to the United Nations offices in Geneva and, according to their report, did have some important meetings with key operatives in the United Nations High Commission for Human Rights office.

I was pleased, for example, to see that they met with my old friend Mr. Bertrand Ramcharan, who is the Acting High Commissioner for Human Rights. Many honourable senators might find it interesting to know that Mr. Ramcharan worked closely with Canada's Professor John Humphrey, who wrote the first draft of the Universal Declaration of Human Rights.

On page 5 of the report, I also noted that they had a round table with a number of non-governmental organizations on human rights. Among the participants is another distinguished Canadian, Philippe LeBlanc, who represents the Dominicans for Justice and Peace, as well as representing the Franciscans International. Both of those religious orders, the Dominicans and the Franciscans, are well known, and Philippe LeBlanc is himself a Dominican priest. He has been one of the leaders in the non-governmental organization community, not only here in Canada but internationally.

Yesterday, we mentioned, and I will leave it on the record, that I think it is perfectly clear, that the meaning of the provision of the International Covenant on Economic, Social and Cultural Rights makes it patently clear — article 13 — and that the clarification was important.

Our colleagues also paid a visit to Strasbourg and, in particular, to the Council of Europe and the European Court of Human Rights. That was a worthwhile visit because that European regional system is something that we, as Canadians, should keep an eye on. Honourable senators will recall the interest in Canada in many quarters during the last constitutional round for setting in place a Canadian social charter. In Europe, they do have the European Social Charter, as well as the European Convention of Human Rights.

I compliment our colleagues for the visit that they made, and their very busy schedule. I hope that we will maintain the relationship with those Europeans.

The Hon. the Speaker *pro tempore***:** Honourable senators, pursuant to rule 6(1), it being twelve o'clock midnight, I declare the motion to adjourn the Senate is deemed to have been moved and adopted.

The Senate adjourned until tomorrow at 9 a.m.

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ORDERS OF THE DAY

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