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Thursday, February 19, 2004



THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Thursday, February 19, 2004

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

Prayers.

SENATORS' STATEMENTS

CITIZENSHIP ACT, 1977

REINSTATEMENT OF RESIDENTS WHO LOST CITIZENSHIP

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the time has come for the Senate of Canada to take leadership in righting a terrible wrong that has victimized a very special group of persons.

Honourable senators, I am speaking of Canada's lost children. These are children who were born in Canada but who lost their right to Canadian citizenship because of a terrible provision contained in the 1947 Canadian Citizenship Act. This statute, which was replaced by the 1977 act, resulted in citizens born in Canada between 1947 and 1977 being deprived of their citizenship if their father took the citizenship of another country during that period.

Given that the human rights values embraced by all Canadians as articulated by the United Nations Convention on the Rights of the Child, which speaks to the fact that children are neither chattel nor property, I call upon the Senate to intervene, using all means, to facilitate redress through executive action or legislative action to a terrible wrong.

Everyone has the right to a nationality, and persons born in Canada must not be allowed to remain Canada's lost children.

Hon. Senators: Hear, hear!

CONSERVATIVE PARTY LEADERSHIP

SUPPORTERS OF BELINDA STRONACH TEAM

Hon. John G. Bryden: Honourable senators, as I was looking at the morning paper, the *National Post*, a favourite of mine, I could not help but bring to mind some of the statements made on the side opposite yesterday. It reminded me of the old adage: Those who live in glass houses should not throw stones. I should like to quote to honourable senators from the article that brought that adage to mind. The headline is "Stronach wary of disgraced Tories." It is written by Irwin Block, dateline Montreal. The subheading is: "They don't work for us." The article states:

Belinda Stronach has distanced herself from three former Tories with checkered pasts who are helping build support in Quebec for her Conservative party leadership bid.

Ms. Stronach said yesterday that two former MPs who endorsed her are not part of her campaign team but are simply among a flood of people who want her to lead the new party.

The two men — Gabriel Fontaine and Michel Côté — announced last week they were backing her candidacy.

"They don't work for us, they're supporters, I guess. They came out," Ms. Stronach said after a mid-morning meeting with Montreal *Gazette* publisher Larry Smith, who at one point had contemplated seeking the job himself.

Both Mr. Fontaine and Mr. Côté saw their political careers end in scandal. Mr. Fontaine was convicted in 1999 of defrauding taxpayers of \$100,000. Mr. Côté, a former industry minister, was fired by then prime minister Brian Mulroney in 1988 for breaching conflict of interest rules.

In a brief interview, Ms. Stronach suggested her staff has not had time to check on all the former Tories who have offered help. "We've been overwhelmed by the support," she said.

Ms. Stronach also said she had no prior knowledge that a prominent Montreal lawyer who was convicted in the United States last year on charges of conspiracy and falsifying documents in connection with the US\$17-million stock-manipulation scheme was co-hosting a reception in her honour, held last night.

She had no idea he was hosting the reception that she had last night in Montreal.

Harry Bloomfield, who ran against Pierre Elliott Trudeau and was a director of the Business Development Bank of Canada, told the *National Post* he had been asked by Conservative Senator David Angus to co-sponsor last night's reception.

An. Hon. Senator: Shame!

Senator Bryden: The article states that Ms. Stronach made it clear —

Senator Kinsella: Order! Sit down! Order!

Senator St. Germain: Three cheers for Belinda!

The Hon. The Speaker pro tempore: I regret to inform the Honourable Senator Bryden that his time has expired.

[Translation]

CRIMINAL CODE

SUPREME COURT RULING IN SECTION 43

Hon. Gérard-A. Beaudoin: Honourable senators, in late January 2004, the Supreme Court of Canada handed down a decision on section 43 of the Criminal Code, concerning corporal punishment that may be used against children. The court began by affirming that no child under two and no adolescent should be subject to corporal punishment.

The Supreme Court listed punishments that must not be used, and rightly prohibited slaps or blows to the head, the use of sticks, whips, belts, electrical wires and other objects which had been tolerated by section 43.

I am very pleased that the Supreme Court eliminated this kind of punishment; it was high time. However, I dream of the day when we can say that all corporal punishment of children must be eliminated. We must find other ways of bringing up children, of that I am certain. We must use methods of discipline other than corporal punishment. We are slowly becoming civilized.

• (1340)

[English]

ROUTINE PROCEEDINGS

THE ESTIMATES, 2003-04

SUPPLEMENTARY ESTIMATES (B) TABLED

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of the Supplementary Estimates (B) 2003-04 for the fiscal year ending March 31, 2004.

[Translation]

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Lise Bacon, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, February 19, 2004

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

THIRD REPORT

Your Committee recommends that the following funds be released for fiscal year 2003-2004.

Transport and Communications (Legislation)

Professional and Other Services	\$ 4,800
Transportation and Communications	\$ 0
Other Expenditures	\$ 500
Total	\$ 5,300

Respectfully submitted,

LISE BACON
Chair

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

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

COMMITTEE OF SELECTION

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Rose-Marie Losier-Cool, Chair of the Committee of Selection, presented the following report:

Thursday, February 19, 2004

The Committee of Selection has the honour to present its

THIRD REPORT

Your Committee recommends a change of membership to the following committee:

Standing Senate Committee on Human Rights

The Honourable Senator Plamondon replaces the Honourable Senator Mercer as a member of the Standing Senate Committee on Human Rights.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL
Chair

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

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

SCRUTINY OF REGULATIONS

FIRST REPORT OF COMMITTEE PRESENTED

Hon. Céline Hervieux-Payette, Chair of the Standing Joint Committee for the Scrutiny of Regulations, presented the following report:

Thursday, February 19, 2004

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

FIRST REPORT

Your Committee reports that in relation to its permanent reference, section 19 of the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, the Committee was previously empowered “to study the means by which Parliament can better oversee the government regulatory process and in particular to enquire into and report upon:

1. the appropriate principles and practices to be observed

a) in the drafting of powers enabling delegates of Parliament to make subordinate laws;

b) in the enactment of statutory instruments;

c) in the use of executive regulation — including delegated powers and subordinate laws;

and the manner in which Parliamentary control should be effected in respect of the same;

2. the role, functions and powers of the Standing Joint Committee for the Scrutiny of Regulations.”

Your Committee recommends that the same order of reference together with the evidence adduced thereon during previous sessions be again referred to it.

Your Committee informs both Houses of Parliament that the criteria it will use for the review and scrutiny of statutory instruments are the following:

Whether any Regulation or other statutory instrument within its terms of reference, in the judgement of the Committee:

1. is not authorized by the terms of the enabling legislation or has not complied with any condition set forth in the legislation;
2. is not in conformity with the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights;
3. purports to have retroactive effect without express authority having been provided for in the enabling legislation;
4. imposes a charge on the public revenues or requires payment to be made to the Crown or to any other authority, or prescribes the amount of any such charge or payment, without express authority having been provided for in the enabling legislation;

5. imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;

6. tends directly or indirectly to exclude the jurisdiction of the courts without express authority having been provided for in the enabling legislation;

7. has not complied with the *Statutory Instruments Act* with respect to transmission, registration or publication;

8. appears for any reason to infringe the rule of law;

9. trespasses unduly on rights and liberties;

10. makes the rights and liberties of the person unduly dependent on administrative discretion or is not consistent with the rules of natural justice;

11. makes some unusual or unexpected use of the powers conferred by the enabling legislation;

12. amounts to the exercise of a substantive legislative power properly the subject of direct parliamentary enactment;

13. is defective in its drafting or for any other reason requires elucidation as to its form or purport.

Your Committee recommends that its quorum be fixed at 4 members, provided that both Houses are represented whenever a vote, resolution or other decision is taken, and that the Joint Chairmen be authorized to hold meetings to receive evidence and authorize the printing thereof so long as 3 members are present, provided that both Houses are represented; and, that the Committee have power to engage the services of such expert staff, and such stenographic and clerical staff as may be required.

Your Committee further recommends to the Senate that it be empowered to sit during sittings and adjournments of the Senate.

Your Committee, which was also authorized by the Senate to incur expenses in connection with its permanent reference relating to the review and scrutiny of statutory instruments, reports, pursuant to Rule 104 of the *Rules of the Senate*, that the expenses of the Committee (Senate portion) during the Second Session of the Thirty-seventh Parliament were as follows:

Professional and Other Services	\$ 14,149
Transport and Communications	\$ 0
All Other Expenses	<u>\$ 11,490</u>
Total	\$ 25,639

A copy of the relevant Minutes of Proceedings and Evidence (Issue No. 1, Third Session, Thirty-seventh Parliament) is tabled in the House of Commons.

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE, P.C.
Joint Chair

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

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

[English]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—REPORT OF COMMITTEE ON STUDY ON EMERGING ISSUES RELATED TO MANDATE PRESENTED

Hon. Tommy Banks, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, February 19, 2004

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

SECOND REPORT

Your Committee, was authorized by the Senate on February 10, 2004, to examine and report on emerging issues related to its mandate.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

TOMMY BANKS
Chair

(For text of budget, see today's Journals of the Senate, Appendix A, p. 159.)

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

Senator Banks: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(g), I move that the report be placed on the Orders of the Day for consideration later this day.

Senator Lynch-Staunton: Explain.

[Senator Hervieux-Payette]

Senator Banks: The budget, which is included in this report, contemplates attendance at a conference at the end of March which requires that travel and hotel arrangements be made forthwith. It is one of those situations in which a day will literally make a difference.

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

Senator Lynch-Staunton: No.

The Hon. the Speaker pro tempore: Leave is not granted.

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

TRANSPORT AND COMMUNICATIONS

BUDGET—REPORT OF COMMITTEE ON STUDY OF MEDIA INDUSTRIES PRESENTED

Hon. Joan Fraser, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Thursday, February 19, 2004

The Standing Senate Committee on Transport and Communications has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Friday, February 13, 2004, to examine and report on the current state of Canadian media industries; emerging trends and developments in these industries; the media's role, rights, and responsibilities in Canadian society; and current and appropriate future policies relating thereto, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

JOAN FRASER
Chair

(For text of budget, see today's Journals of the Senate, Appendix B, p. 167.)

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

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

NATIONAL SECURITY AND DEFENCE

[English]

BUDGET—REPORT OF COMMITTEE ON STUDY OF
NEED FOR NATIONAL SECURITY POLICY PRESENTED

Hon. Colin Kenny, Chairman of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, February 19, 2004

The Standing Senate Committee on National Security and Defence has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Friday, February 13, 2004, to examine and report on the need for a national security policy for Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within Canada and to travel inside and outside of Canada, for the purpose of such study.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

COLIN KENNY
Chair

(For text of budget, see today's Journals of the Senate, Appendix C, p. 173.)

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

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

[Translation]

FISHERIES AND OCEANS

REPORT PURSUANT TO RULE 104 TABLED

Hon. Gerald J. Comeau: Honourable senators, pursuant to rule 104 of the *Rules of Senate*, I have the honour to table the first report of the Standing Senate Committee on Fisheries and Oceans, regarding the expenses incurred by the committee during the Second Session of the Thirty-seventh Parliament.

(For text of report, see today's Journals of the Senate, p. 148.)

THE ESTIMATES, 2003-04

NOTICE OF MOTION TO AUTHORIZE
NATIONAL FINANCE COMMITTEE
TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, Friday, February 20, 2004, I will move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2004, with the exception of Parliament vote 10b.

NOTICE OF MOTION TO REFER VOTE 10B OF
SUPPLEMENTARY ESTIMATES (B) TO STANDING JOINT
COMMITTEE ON LIBRARY OF PARLIAMENT

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, Friday, February 20, 2004, I will move:

That the Standing Joint Committee on the Library of Parliament be authorized to examine the expenditures set out in Parliament vote 10b of the Supplementary Estimates (B) for the fiscal year ending March 31, 2004; and

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

THE SENATE

SENATORS APPOINTED
TO JOINT COMMITTEES—MESSAGE TO COMMONS—
NOTICE OF MOTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I give notice that tomorrow, Friday, February 20, 2004, I will move, in accordance with rule 59(18):

That a message be sent to the House of Commons to acquaint that House of the names of the honourable senators appointed to serve on the Standing Joint Committees as reported in the second report of the Committee of Selection, adopted February 3, 2004.

• (1350)

FEDERAL NOMINATIONS BILL

FIRST READING

Hon. Terry Stratton presented Bill S-13, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to serve in high public positions.

Bill read first time.

The Hon. the Speaker *pro tempore*: When shall this bill be read the second time?

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

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITIONS

Hon. Joan Fraser: Honourable senators, pursuant to rule 4(h), I have the honour to table petitions from 95 persons asking that Ottawa, the capital of Canada, be declared a bilingual city, reflecting the duality of the country. The petitioners ask 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;

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 affirm in the Constitution of Canada that Ottawa, the capital of Canada, — the only one mentioned in the Constitution — be declared officially bilingual, pursuant to section 16 of the Constitution Act, from 1867 to 1982.

[Translation]

Hon. Viola Léger: Honourable senators, pursuant to rule 4(h), I have the honour to table, in this house, petitions from 84 signatories asking that Ottawa, the capital of Canada, be declared a bilingual city, reflecting the country's linguistic duality.

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

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

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

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

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 call upon Parliament to affirm in the Constitution of Canada, that Ottawa, the capital of Canada — the only one mentioned in the Constitution — be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

Hon. Gerald J. Comeau: Honourable senators, pursuant to rule 4(h), I have the honour to table, in this house, petitions from 71 signatories asking that Ottawa, the capital of Canada, be declared a bilingual city, reflecting the country's linguistic duality.

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

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

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

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

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 call upon Parliament to affirm in the Constitution of Canada, that Ottawa, the capital of Canada — the only one mentioned in the Constitution — be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

[English]

QUESTION PERIOD

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

NOVA SCOTIA—WINTER STORM— DECLARATION OF STATE OF EMERGENCY

Hon. Gerald J. Comeau: Honourable senators, my question is for the Leader of the Government in the Senate. As the minister will know, Nova Scotia has been badly hit by a winter blizzard of major proportions, and the Nova Scotia government has declared a state of emergency. Can the minister tell this chamber if the province has requested any federal assistance and, if so, what assistance has been requested or offered?

Hon. Jack Austin (Leader of the Government): Honourable senators, no Canadian could be unaware of the situation in Nova Scotia with respect to the storm, but with respect to any message from the government of the Province of Nova Scotia with respect to the declared state of emergency, I have not received any information at this time.

Senator Comeau: Could the minister endeavour to find out for us whether this is, in fact, happening, and if so, could he as well determine if any of the Armed Forces will be giving a hand to Nova Scotia, if such assistance is required, and what the level of assistance might be?

Senator Austin: Honourable senators, I will make that part of my inquiry. As Honourable Senator Comeau knows, the province must specifically request the use of the Armed Forces. I am not aware that they have done so.

HEALTH

TOBACCO CONTROL PROGRAM

Hon. Wilbert J. Keon: Honourable senators, despite the fact that our overall smoking rate continues to decline, a recent Health Canada study found that, in 1988, 100 babies in this country died from smoking-related causes, including low birth weight and respiratory complications. The number of smoking-related deaths and incidents of lung cancer among women has also grown, according to these reports.

Last spring, Canada supported the World Health Organization's framework convention on tobacco control which aims, among other things, to crack down on tobacco use and second-hand smoke.

My question is this: What is the federal government doing to further the implementation of this program?

• (1400)

Hon. Jack Austin (Leader of the Government): First, let me say, honourable senators, that I value Senator Keon's questions, because they inform the Senate about various areas of health concern.

Second, in answer to Senator Keon's question, probably not enough, but I shall look into the situation.

Senator Keon: Honourable senators, four members of the Ministerial Advisory Council on Tobacco Control resigned their positions last year, saying that they had extremely limited access to the former Health Minister, Anne McLellan, and that they had been prevented from doing any meaningful work. The federal Tobacco Control Programme has also lost about \$13 million in funding over the last year. Although the smoking rate in Canada has gone down in recent years, tens of thousands of people are still dying of smoking-related diseases, as we all know.

Could the Leader of the Government in the Senate tell us if the new government will restore both the funding and a high profile to the tobacco control campaign?

Senator Austin: At this moment, honourable senators, I cannot, but again I shall inform myself and advise the honourable senator.

THE SENATE

UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM—REQUEST FOR DEBATE

Hon. Douglas Roche: My question is to the Leader of the Government in the Senate. Today, in the House of Commons, for the second time this week, a debate is taking place on Canada's possible participation in the U.S. missile defence system. This is certainly one indication of the deep interest that exists within Parliament for this subject.

Will the Leader of the Government cause a debate to take place in the Senate and consider a reference to committee to examine this issue, which is of central importance to the foreign policy of Canada?

Hon. Jack Austin (Leader of the Government): Honourable senators, while I concur that the issue is of importance to the foreign policy of Canada in the fields of defence, security and foreign affairs, this debate, which Senator Roche has referred to, is being conducted in the other place. All the issues are out on the table there. The debate in the other place is fulsome; as such, I am not certain what would be added by a debate at this time in this chamber.

Senator Lynch-Staunton: So much for the Senate's influence.

FOREIGN AFFAIRS

UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM

Hon. Douglas Roche: A debate leading to a study of this issue would examine the very controversial matter of whether the ground-based system is actually inextricably linked to the space system. What could be added is an examination of today's announcement by the Government of Russia — reported by the Associated Press — that it has perfected a weapon capable of penetrating any prospective missile shield. Surely, honourable senators, there are grounds for a considered reflection by the members of the Senate on this subject.

Concerning the review of Canada's foreign policy and defence, which will be reported on finally at the end of 2004 — in the interval, life has to go on — many decisions will have to be taken in the foreign policy field. Therefore, I would ask this question of the Leader of the Government: What values will the Canadian government base its decisions on — the new Canadian government that has come into being? What values in foreign policy and defence issues will the new government employ as it makes these decisions?

Hon. Jack Austin (Leader of the Government): Honourable senators, as usual Senator Roche is right on top of the process.

The foreign affairs and defence policy review will get underway shortly, but, as Senator Roche says, the report is not expected before the end of this year.

I acknowledge, too, the value of the honourable senator's statement that decisions have to be made in the meantime, that the entire foreign and defence policy of Canada cannot await the results of the study. However, where issues do not need to be resolved in the interim, they will be left to form a part of the considered study.

With respect to the last part of the honourable senator's question, I believe the whole purpose of the study is to determine the answer to the honourable senator's question about how Canadian values should affect our foreign affairs interests and policy, and our defence interests and policy. To the extent that it is helpful — and I am sure it is not very helpful — I would say that defence, including, in my view, issues relating to peace and disarmament, are important steps to be considered.

PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT—SPONSORSHIP PROGRAM—RELEASE OF CABINET DOCUMENTS

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. It is a follow-up question to the series of questions I asked yesterday about disclosure of documents for the inquiry.

The Prime Minister promised that all cabinet documents would be released to the Public Accounts Committee to assist in their investigation of the sponsorship scandal. Can the Leader of the Government tell us if he now has knowledge as to whether caveats will be put on the use of these documents? For example, will the committee only be able to examine them in camera?

Hon. Jack Austin (Leader of the Government): Honourable senators, the Prime Minister has sought the consent of former Prime Minister Chrétien for accessibility to relevant documents, and that consent has been given.

With respect to the use of the documents in question, they remain of the nature of cabinet documents. As such, there will be issues contained within them that, as matters of public policy that have been the acknowledged practice of all governments, should not be disclosed to the public at large. It is my understanding and belief that the documents will be disclosed under conditions that will allow the committee to understand the issues involved.

Senator Oliver: As honourable senators know, the terms of reference for the public inquiry are expected to be released some time today. As yet, I do not know them myself. Although these terms of reference have not been released, can the Leader of the Government now tell us if the public inquiry will also have access to the cabinet documents?

Senator Austin: Honourable senators, the terms of reference will indeed be released, or so it is my expectation. They have been

drawn up to the satisfaction of the inquiry commissioner, Mr. Justice Gomery. The Prime Minister, the Right Honourable Paul Martin, has said that everything the inquiry commissioner wishes to see he will in fact see.

Again, decisions will have to be made, I suspect, with respect to the normal rules that apply to cabinet materials under the legislation that is in force.

AUDITOR GENERAL'S REPORT—SPONSORSHIP PROGRAM—INVOLVEMENT OF MINISTERIAL STAFF

Hon. W. David Angus: First, honourable senators, I wish to acknowledge the response given by the Leader of the Government in the Senate on Tuesday, before I came into the chamber, on the positions of Pierre Tremblay and Charles (Chuck) Guité. I thank him for that.

Honourable senators, it seems like the more we dig into this mess of a scandal, the sponsorship scandal, the bigger and dirtier it gets. Yesterday, in the other place, a document was tabled relating to firms being recommended for government contracts. Today, the wires are buzzing with discussions of the Right Honourable Prime Minister Paul Martin's director of communications, Mario Lague, and his involvement in the sponsorship program as the senior bureaucrat in the Privy Council Office on the federal communications strategy. Yesterday, the Right Honourable Prime Minister assured the House of Commons that every cabinet minister has been, or is being, asked whether they had any knowledge whatsoever of inappropriate activity in the sponsorship issue.

• (1410)

Can the Leader of the Government assure this house that all staff in the offices of the ministers who are being questioned about their involvement are also being asked whether they have any knowledge of any inappropriate activity?

Hon. Jack Austin (Leader of the Government): Honourable senators, as is well known, in the process of discussion with potential ministers, not only those candidates who are now ministers but also a number of other persons in the other place, and perhaps here, I do not know, were asked for full disclosure. I can assure Honourable Senator Angus that it was a very full disclosure. The same rules under the conflict of interest guidelines released by the Prime Minister for ministers and their staffs apply to those staffs. To the extent that I am familiar with the process, all of those people should have been interviewed and full disclosure made before they were hired.

Senator Angus: Honourable senators, does the Leader of the Government have any information whether Mario Lague was questioned about his involvement? Also, can he advise whether Mr. Lague is still a key member of the Prime Minister's staff?

Senator Austin: Honourable senators, my understanding is that Mario Lague was interviewed and gave full disclosure, and that the Prime Minister is satisfied that he has made full disclosure and is not implicated in any way in the investigations that are under way.

Senator Angus: Is he still on the staff?

Senator Austin: Yes, he is.

AUDITOR GENERAL'S REPORT—
SPONSORSHIP PROGRAM—INVOLVEMENT
OF HEADS OF CROWN AGENCIES

Hon. W. David Angus: There is an article by our friend Jack Aubry in today's *Ottawa Citizen* headed, "Gagliano discussed sponsorship program with Crown bosses." In the course of this article it is mentioned that Treasury Board President Reg Alcock will interview the Crown heads and indicate if they should be fired or whether other action should be taken against them.

Who are these Crown heads, and do they just include the CEOs or presidents, or do they also include the boards of directors who are appointed by Order in Council?

Hon. Jack Austin (Leader of the Government): Honourable senators, I hope that Senate Debates reports accurately that Senator Angus said "Crown heads" and not "crowned heads."

Honourable senators, the President of the Treasury Board was alluding to the five Crown corporations referred to by the Auditor General in her report. As far as I am aware, some of the interviews have taken place and some are taking place with respect to both chairs and CEOs when the offices are separated. I am not aware that members of the board of directors of those Crown corporations are being interviewed. I simply do not have information on that subject.

AUDITOR GENERAL'S REPORT—SPONSORSHIP
PROGRAM—MEETINGS BETWEEN MINISTERS
AND HEADS OF CROWN AGENCIES

Hon. David Tkachuk: Honourable senators, in that same article in the *Citizen* story, Mr. Aubry wrote about how Mr. Gagliano hosted quarterly lunch meetings with the heads of the various Crown corporations and that they were urged by Mr. Gagliano to help increase the Canadian presence in Quebec, perhaps by participating in the sponsorship program. Mr. John Grant, the former head of Canada Lands, refused to play ball with Mr. Gagliano on the basis that the arm's length relationship between the government and the Crown had to be upheld.

What is the position of this government regarding the fact that these arm's length corporations were receiving such instructions from this minister? Was it the policy of the government for other cabinet ministers to be doing business in the same way?

Hon. Jack Austin (Leader of the Government): Honourable senators, may I say first that when an honourable senator relies on a news story, it is taken, under our rules, that the honourable senator will stand by the facts in that news story.

I do not, of course, know the truth of what Jack Aubry reports in that news story. However, if I may respond to one of the aspects of the honourable senator's question, I believe it would be

perfectly normal for a minister to whom Crown corporations reported to meet with the heads of those Crown corporations and, in fact, from time to time, to meet with all of them because there are issues and policies that apply to them in common.

The mere fact that such a meeting takes place with the minister has, on the face of it, nothing to do with a suggestion of any behaviour that would be inappropriate.

Senator Tkachuk: Honourable senators, unlike the previous senator's statement on a newspaper article, I am actually asking a question to find out if the newspaper article is true. I am not sure if the Leader answered that question. I will ask it again and then I will ask a further supplementary question.

Is it the position of the government that these types of meetings, where ministers are demanding that certain government programs take place within the Crown corporations, are done in this way, over lunch in a little restaurant somewhere? Is it the position of the Martin government that business with heads of Crown corporations and ministers of Public Works on government policy will be done in the same way?

Senator Austin: Honourable senators, I was very pleased to hear that Senator Tkachuk is only asking questions about whether these news articles are accurate. Then he switched to relying on a statement made, and asked a question on the basis that the statement is true. I will give him just the answer that I gave him previously.

With respect to my statement regarding ministers meeting with Crown corporation heads who report to them, I said that that is a very normal way of proceeding. In any organization, that is normal, and nothing untoward should be taken from the mere fact that a minister meets with Crown corporation heads.

Finally, if the honourable senator is asking me if anything untoward took place at such a meeting, of course I have no information, the honourable senator has no information, and I do not know whether Jack Aubry has any information.

Senator Tkachuk: I will ask then if Mr. John Grant, who is the source of the story, is not telling the truth.

Senator Austin: Honourable senators, I do not report in this chamber for Mr. John Grant.

INTERGOVERNMENTAL AFFAIRS

OFFICIAL LANGUAGES— BILINGUAL STATUS OF CITY OF OTTAWA

Hon. Eymard G. Corbin: Honourable senators, supplementary questions can go on for weeks here sometimes.

My question is directed to the Leader of the Government in the Senate.

[Translation]

The issue of bilingualism, or linguistic duality in the National Capital does not concern only the residents of the National Capital Region. It is a national issue. Has the government entered, or would it consider entering into discussions with the Province of Ontario about making Ottawa officially bilingual? Given that the City of Ottawa is a creature of the Ontario Legislature, it is to be expected that we would enter into discussions with the provincial government so that it can take steps in this direction.

• (1420)

Could the honourable minister tell us today whether the government has taken steps in that direction or intends to do so in the near future?

[English]

Hon. Jack Austin (Leader of the Government): Honourable senators, I will make an inquiry of the Honourable Pierre Pettigrew, the Minister of Intergovernmental Affairs, to see whether any formal process has begun. I would be interested in the answer to that question.

I also want to inquire whether the City of Ottawa has taken any formal decision and whether it would be a part of a provincial or city requirement to hold a referendum with respect to that question.

The Hon. the Speaker *pro tempore*: The Honourable Senator Fraser.

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, pursuant to rule 33(3), I move that Senator St. Germain do now be heard.

Hon. Jack Austin (Leader of the Government): Honourable senators, I second that motion!

PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM—IMPARTIALITY OF COMMISSIONER OF INQUIRY

Hon. Gerry St. Germain: Now that's a western gentleman!

Honourable senators, my supplementary question is addressed to the Leader of the Government in the Senate. It was stated yesterday that the Montreal judge, John Gomery, who heads the public inquiry into the corruption scandal, also serves as a Liberal government appointee as Chairman of the Copyright Board of Canada. I know the background on these appointments. I am fully aware that the position must be filled by a judge, and that he or she receive no remuneration and all of that.

I do not wish to impugn in any way the integrity of the judge. There is no question about his integrity. However, he has been put in an untenable position. Would the Leader of the Government in the Senate not agree that over the last 10 years of the Chrétien government, every appointment has been a partisan appointment? As a result, it will be perceived by the public that this appointment, too, is a partisan one. Even the judge says it is

not tenable. What is the reaction of the Leader of the Government to that statement?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am absolutely certain that if Senator St. Germain thinks about his question and its allegation —

Senator St. Germain: It is not an allegation.

Senator Austin: — that every appointment made in the last 10 years was a partisan appointment, he would withdraw his statement. I say that because he would recognize in that the appointment of members of the Supreme Court of Canada, of individuals to the courts of the provinces of Canada —

Senator Bryden: And senators.

Senator Austin: I am not going as far as senators.

However, Senator St. Germain knows the answer to his question. I am glad I heard from him that he does not impugn Mr. Justice Gomery in any way. Senator St. Germain knows that Mr. Justice Gomery has served Canada because of his expertise in copyright, and that there was no remuneration.

Finally, I am sure Senator St. Germain knows that Mr. Justice Gomery has said that he would resign from the Copyright Board forthwith upon settling the terms of reference and on beginning to undertake the inquiry.

Senator St. Germain: Honourable senators understand that there have been appointments that possibly have not been partisan. I am speaking about the perception of the general public. The Honourable Senator Austin, as Leader of the Government in the Senate and as an experienced cabinet minister in the Trudeau regime, knows how our part of the country thinks, whether it is right or wrong. This is not about reality, it is about perception. Does he not think that the perception could be wrong?

Senator Austin: Honourable senators, if that is the perception, then it is the duty of Senator St. Germain, myself, and everyone here to tell the truth and set the facts straight.

[Translation]

SOLICITOR GENERAL

ROYAL CANADIAN MOUNTED POLICE— POSSIBLE BREACH OF CODE OF ETHICS— INVOLVEMENT IN SPONSORSHIP PROGRAM

Hon. Jean-Claude Rivest: Honourable senators, my question is for the Leader of the Government in the Senate and follows on my previous question. I do not know if the minister has had time to do the necessary checking into a certain train trip by RCMP officers.

Here is some additional information for the minister to situate his research. Odilon Émond, an RCMP officer, said the following in a letter to all RCMP senior officers:

We got VIA Rail to sponsor a special train to transport us from Quebec City to Montreal for our regimental ball —

[Senator Corbin]

To help the minister in his research, we add that the invitation to this reception was addressed not just to a few RCMP officers but to all staff in Ottawa and all commanding officers of the RCMP across Canada.

Was the minister able to obtain additional information? I would point out that, on the one hand, this is standard and usual practice for the RCMP; on the other, we would like an answer. When the journalist put the question to the RCMP, their representative refused to comment.

Second, with regard to the sponsorships, should the government not define the mandate given to the Sûreté du Québec to take over from the RCMP in the part of the investigation concerning VIA Rail, since senior RCMP officers apparently received special consideration from VIA Rail, which would appear to be in contradiction of the code of ethics and common sense with regard to management of RCMP affairs?

[English]

Hon. Jack Austin (Leader of the Government): Honourable senators, I have seen the newspaper report to which the honourable senator refers. That is as much as I am aware of with respect to the RCMP and whatever considerations were extended to them by VIA Rail. I will be looking for additional information with respect to that subject.

With respect to the role which the Sûreté du Québec is playing in relation to the investigation of the RCMP's role in the sponsorship of the musical ride, I am not sure what more is needed in the terms of reference. The terms of reference were negotiated between the Sûreté du Québec, the RCMP and the Attorney General of Canada. They seem to be satisfactory to all three parties at this time.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table a response to a question raised in the Senate on February 4, 2004, by Senator Andreychuk regarding the review of the Security of Information Act.

JUSTICE

REVIEW OF SECURITY OF INFORMATION ACT

(Response to question raised by Hon. A. Raynell Andreychuk on February 4, 2004)

The question as posed does not specifically refer to section 4 of the *Security of Information Act*. However, having reviewed excerpts from the Senate Debates of February 3, 2004, it would appear that Senator Andreychuk's inquiry relates to that section.

As mentioned during the Senate debates of February 3 and 4, 2004, the Honourable Anne McLellan, Deputy Prime Minister and Minister of Public Security, announced on

January 28, 2004, that Parliament would be asked to review section 4 of the *Security of Information Act*. The Honourable Irwin Cotler, as Minister of Justice, is responsible for the *Security of Information Act* and thus the parliamentary review of section 4.

As part of this review, Parliament will have the opportunity to consider a number of strategic issues raised by section 4 including what types of documents should be protected and under what circumstances can disclosure be justified in the name of public interest.

The Department of Justice is undertaking preparatory work to assist parliamentarians in their review of section 4 of the *Security of Information Act*. It is not currently considering nor reviewing any specific amendment of section 4.

ORDERS OF THE DAY

REPRESENTATION ORDER 2003 BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-5, respecting the effective date of the representation order of 2003.

Hon. Lowell Murray: Honourable senators, for the third time since 1993, we have before us a bill whose purpose is to tamper with the Canada Elections Act. In the two previous instances, the Senate properly assumed its responsibilities by blocking these attempts to tamper with the electoral process.

In 1994 and 1995, the government wanted, for partisan reasons, to postpone the effective date of the new electoral map. This time, because of the anticipated election in 2004, the government wants to make an exception to the act and reduce by five months the period between the proclamation of the new map and its coming into effect.

• (1430)

We are told that Bill C-5 enjoys the support of almost all the political parties in the House of Commons. Far from persuading us to quickly pass this legislation, this argument should make us wonder. The 12-month delay provided for in the current act is there to give everyone, including candidates, political parties and voters at the local and national levels enough time to get used to the new boundaries, get organized and get ready before an election is called.

The interests of incumbents are not always the same as those of the other people involved. It may even be that some members of Parliament are putting themselves in a conflict of interest position. This is why, in such a case, the Senate has a duty to take a very close look at the reasons given by the members of the other place.

[English]

Our friend Senator Smith came in here on Friday proclaiming that this bill was intended to enhance the quality of representative democracy. I do not know whether it was youthful exuberance or blind party loyalty that led him to make such an extravagant claim for the bill. I cannot help but recall that this is coming from a government that in 1994 and 1995 was prepared to ram through bills that would have forced the country to have an election in 1997 on the basis of 1981 population figures — some quality of representative democracy!

Parenthetically, I cannot help but remark on the irony that this bill is coming from a government that is doing so much to distance itself from its predecessors. After all, this bill originated last fall with the Chrétien government. We know that the present Martin government has abandoned a number of quite significant legislative initiatives of its predecessor. Mr. Martin has abandoned most of the ministers in the Chrétien government. Indeed, there is some suggestion that he is only too ready to abandon Mr. Chrétien himself, but here he is clinging to this one holdover, this one relic from the previous session, this bill to hurry up the redistribution process.

It is very interesting that the government is pressing forward, with such vigour, with a legislative initiative from the Chrétien era. Why did Mr. Chrétien bring forward the bill in the first instance? For the convenience of his successor, Mr. Martin. Mr. Diefenbaker would have had the words for it. “Chrétien and Martin,” he would have said, “two peas in the same pod.”

Senator Smith and Senator Austin, who got into the act briefly on Friday morning, tried to pretend that this bill was about the creation of seven additional seats: three for Ontario and two each for British Columbia and Alberta. This, of course, is a lot of nonsense. These eight additional seats in the House of Commons were cast in stone last August 25, and they would be operative for any election that would be called after August 25, 2004.

Honourable senators, the purpose of this bill is to hurry it up so that Mr. Martin may call an election on or immediately after April 1. As I said yesterday, they could have changed the law — that is, if they really believed that a six-month delay was sufficient. However, they did not change the law because they are not sure that it is sufficient. They want to change the law for this case only so that the political convenience of the Liberal Party may be accommodated. We will have a law that says 12 months, however, every 10 years or so, depending upon the convenience of the government or the incumbent MPs in the Commons, of all parties, we will prolong the period beyond 12 months or we will shorten it to less than 12 months, depending upon political expediency.

[Senator Murray]

Senator Smith raised a few other matters that I hope I can touch upon in the time that is left to me. He said, quite correctly, that while representation by population is the operative and the most important principle, we are really talking about relative parity of voting power. We have never had in this country pure representation by population; that is true. He mentioned in this connection the Senate floor, under which no province can have fewer members in the House of Commons than it has in the Senate. As we all know, that could only be changed by constitutional amendment.

There are other factors that I think are worth noting, just in passing. One of those, for example, is the 1985 Representation Act. Under that act, each province was guaranteed no fewer seats than it had in 1976. The result is that five provinces have a total of 18 seats more than they would otherwise be entitled to if representation by population really applied. Without being offensive, I hope I can tell honourable senators what those provinces are and what the overrepresentation is.

As a result of the 1985 Representation Act, Saskatchewan is overrepresented by five MPs; Manitoba by four; Quebec by seven; and Nova Scotia and Newfoundland and Labrador by one each. In the case of Nova Scotia and Newfoundland and Labrador, they are already overrepresented by two MPs in the case of Nova Scotia and by one MP in the case of Newfoundland and Labrador by reason of the Senate floor.

In terms of strict representation by population, we have therefore not only the Senate floor, which would take a constitutional amendment to change — and which no one is suggesting should be changed — but also the 1985 Representation Act, which is amendable by Parliament acting alone. I am not suggesting that that ought to be jettisoned all at once, but we should look at the report of the Lortie commission and others who have spoken on this issue because some fairly elegant ways have been suggested to phase these arrangements out in the interests of getting as close as we can to representation by population.

The honourable senator also properly mentioned that redistribution deals not just with the additional seats that may be accorded to several provinces by reason of population changes but the numerous changes that have to be made to the boundaries of existing ridings within provinces as a result of volatile population movements within those provinces. I find, for example, looking at the material put out at the time by Elections Canada, that while we had a redistribution based on the 1991 census, by the time of the 2001 census, if we look at Ontario, the constituency of Markham was 32 per cent above the representation by population quotient; Mississauga West was 40 per cent above it; Halton was 43 per cent above it; Barrie—Simcoe—Bradford was 44 per cent above it; Vaughan—King—Aurora was 53 per cent above it; Oak Ridges was 61 per cent above it; and Brampton West—Mississauga was 76 per cent above it. I can also give honourable senators figures

for Alberta and even parts of Nova Scotia along much the same line. It is easy to see that population movements are so volatile within a period of 10 years that the imbalance in relative parity of voting power, that is, the relative value of my vote in my constituency and your vote in another constituency, becomes pronounced.

• (1440)

The Hon. the Speaker: I am sorry to interrupt, but I must advise the honourable senator that his time has expired.

Honourable senators, is leave granted for Senator Murray to continue?

Hon. Senators: Agreed.

Senator Murray: Thank you, honourable senators.

I wish to make the point that one of the suggestions that was made, and I believe the proposal was contained in a government bill that fell by the wayside a couple of years ago, was that in those cases where there is evidence from the census of great demographic movement, perhaps a redistribution after five years should be considered on the basis of the five-year census. The Lortie commission suggested that a redistribution process should be set in place after every general election.

I wish to say that the redistribution commission this time did a terrific job. They did not avail themselves of anywhere near the extravagant 25 per cent tolerance that is allowed. In the vast majority of cases, they brought the constituencies to below 10 per cent, and in many cases below 5 per cent of the provincial quotient. They really struck a blow in favour of representative democracy and in favour of “rep. by pop.,” and they should be congratulated on that account.

I would like to see the law changed to bring that tolerance down to 10 per cent or even less than that, except in a few obvious cases like Labrador and some of the big northern ridings where something in excess would have to be contemplated.

Finally, there is the subject of declining turnout at elections. I think this may well be related to the new National Register of Electors. A study done by a professor at McGill University found that the lack of a door-to-door enumeration had a debilitating effect on turnout and, further, that this has increased inequality of participation to the disadvantage of the young and the poor.

Honourable senators, issues such as the 1985 Representation Act; the extravagant — in my view — tolerance that is allowed by the law in terms of exceeding the provincial quotient; the possibility of a redistribution at five-year intervals in those areas where there have been volatile population movements; and a revisiting of the National Register of Electors to see whether it is working as it ought to work, as I suspect it is not, are matters that at some point the Senate should undertake.

I saw in the newspapers this morning that the House of Commons is undertaking some kind of review of elections law. However, I say to you now, as I hinted yesterday, that if we are

waiting for the House of Commons to grasp the mettle and confront any of these truly sensitive and difficult issues, we will be waiting a long, long time. When it comes to the interests of incumbents in that place, there is a degree of multipartisanship that is truly touching to behold. Therefore, some of these things are a proper job for the Senate. I hope sooner rather than later we will take them on.

Some Hon. Senators: Hear, hear!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the honourable senator take a question?

Senator Murray: Certainly.

Senator Kinsella: If I might, I will put the question to the honourable senator that I put to Senator Smith, which was the following: would Elections Canada be better prepared to conduct the election if the act as is in force was respected, as opposed to going with this early election date of April 1? If Mr. Kingsley had more time, he would be better prepared; is there evidence of that?

Senator Murray: I do not know about that. I am prepared to accept on its face the assurances that Mr. Kingsley could be ready on April 1.

What we are losing sight of is that we should be concerned not just about Elections Canada and whether they are ready. There are candidates, political parties and voters to be considered. It is not clear to me at all that candidates and parties are ready.

What is clear to me is that they have never been willing in the other place, through three governments, to take up the recommendations that have been made to shorten the period between the completion of redistribution and the proclamation of the new ridings. They are not confident that they can be ready in that space of time.

This bill will manipulate the process to the political advantage of the party that happens to be in power. I regret very much that at least at the first go-round it seemed to have the complicity — not the support — of most of the other parties in the House of Commons.

Senator Kinsella: The etymology of the term “gerrymandering,” goes back to what Governor Gerry attempted to do in the early 1800s in the Commonwealth of Massachusetts, and how the shape of the ridings in that Commonwealth were very much in the form of a salamander, thus the word “gerrymandering.” Is there, in the view of the honourable senator, a clear case of gerrymandering in the order of time?

Senator Murray: I had not thought of it that way, but I am grateful to the honourable senator for doing so.

Hon. Douglas Roche: My question is for Senator Murray. He has considerable experience in these matters and I would value his opinion on this question: What does Senator Murray think of the argument that when a new Prime Minister arrives on the scene and states that he is forming a new government, then demonstrates that by a Speech from the Throne that puts out its program that the people of Canada have a right to give their opinion via an election at the earliest moment to determine whether or not they support that government?

Senator Murray: Honourable senators, I agree in principle with the statement of the honourable senator. However, I see no great difference between an election respecting that principle held in middle to late May and an election held in late September or early October. I believe that the people of Canada would be happy to wait until the fall for such an election, and increasingly it appears that Mr. Martin might be just as happy to wait.

Hon. Terry Mercer: Honourable senators, I have a question for Senator Murray. He referred to enumeration and perhaps the need for enumeration prior to each election.

Is the honourable senator suggesting that the National Register of Electors should be dispensed with? If so, as a manager of campaigns in the past, I would contend that he might agree that one of the biggest changes and greatest advantages of the national register is to allow those of us who practice this art to manage the process better, knowing well in advance who the voters are, as inaccurate as it may be.

Further, has the honourable senator considered the cost of an enumeration? One of the advantages of a permanent voter registry is the tremendous saving to the taxpayers of an enumeration for every campaign. This consideration needs to be taken into account.

• (1450)

I would suggest that there may be a way of combining it and having enumerations in areas where a certain number of voters have moved or construction has happened that may be able to facilitate both sides of our argument.

Senator Murray: There may be a solution, honourable senator. Some of us engaged in quite a vigorous examination of the Chief Electoral Officer as long ago as 1996, I think it was, about the permanent register. It is not clear to me that those savings have been realized, and we might look into that.

As well, the old enumeration system, door to door, with all its failings, especially in the big urban conglomerations, including the problem of recruiting people to do the enumeration, resulted in a 92 per cent enumeration of eligible voters. The best they have ever been able to claim for the register on day one is 80 per cent.

They add to the register over time, but technology can also create problems. I do not remember whether it was the federal election or the provincial election in Ontario — although it does not matter because the lists are traded back and forth — where hundreds of voters in Picton, Ontario, I think it was, ended up on

a list in a totally different constituency, in a town or village in another constituency that had a name that resembled Picton. Things happen with technology, and terrible accidents can happen with this permanent register.

I just want to revisit this issue and see whether it is true, as that professor from McGill said, that it has had a debilitating effect on, firstly, turnout and, secondly, on the turnout of people of a lower social and economic status. I want to know whether that is true, and I want to look at the cost. We should be willing to reopen the issue. I am not prejudging where I might come down on the matter after I have studied the facts.

On motion of Senator Di Nino, debate adjourned.

ALLOCATION OF TIME FOR DEBATE— NOTICE OF MOTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I rise pursuant to rule 39 to inform the chamber that I have had a discussion with my counterpart, the Honourable Senator Kinsella, about the disposition of Bill C-5, and it has not been possible to reach an agreement concerning the time to be allocated for the second reading stage of this bill. Therefore, pursuant to rule 39, I give notice that, at the next sitting of the Senate, I will move:

That, pursuant Rule 39, not more than a further six hours of debate be allocated for the consideration of the second reading stage of Bill C-5, respecting the effective date of the representation order of 2003;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the second reading stage of the said Bill; and

That any recorded vote or votes on the said question shall be taken in accordance with Rule 39(4).

Senator St. Germain: The more things change, the more they stay the same.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order. I invite honourable senators to take the rule book, the up-to-date version of which is now on senators' desks, and on page 39 read what rule 39(1) says:

At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate, from his or her place in the Senate, may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours for consideration of any stage of consideration of any adjourned debate...

I do not recall being asked by the Deputy Leader of the Government, as the rule provides, “Do you agree to allocate a specified number of days?” There was a conversation. I was not asked how many Conservative Party of Canada senators wished to speak on it. Had I been asked that question, I would have said “Senator Di Nino and myself.”

To be perfectly clear, what is envisioned by rule 39(1) did not take place. I know that it was a private conversation. Perhaps we will need to get these things in writing in the future. I want to place on the record that the prerequisites provided for by that rule were not met by the Deputy Leader of the Government.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, the conversation did take place, and my clear understanding was that the proposal was that a certain amount of time be allocated for the remainder of the debate on second reading of this bill. My understanding was that there was no agreement on that particular amount of time. As a result, I took the action that I did today. My understanding from the conversation I had was very clear — that we could not reach an agreement as to the amount of time to be allocated to the remainder of the debate. With regard to other senators who wish to speak on the second reading debate of this bill, this notice of motion provides adequate time for them to do so.

Senator Kinsella: Does the honourable senator have any recollection that the words “allocating a specified number of days” were ever used in the conversation? I do not.

Senator Rompkey: I certainly remember referring to concluding debate at a certain time next week, which automatically suggests a certain number of hours before arriving at that time next week.

Senator Kinsella: Suppositions and inferences were made, but the specific request about allocating time was not made. The conversation is clear in my mind.

I know the honourable senator is new to the position of deputy leader and that he will attend more carefully to the exigencies of the rule, because the rules protect the minority. If we sound a bit picky about the rules in the minds of some honourable senators, particularly new senators, it is because the minority relies on the rules to make our parliamentary system work. I think the record is clear.

The Hon. the Speaker: Honourable senators, this is a matter between the house leaders, so I had not intended to go to other senators. Senator Kinsella’s point underlines the importance of precision in terms of reference to the rules. The presiding officer finds himself in an awkward position of who to believe, which is not an area I want to enter.

I will accept the notice of motion, but I will do it with this caution: Having listened to the exchange between the house leaders, I admonish them and other senators to pay close attention to the rules and to observe their requirements.

• (1500)

SEX OFFENDER INFORMATION REGISTRATION BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Christensen, for the second reading of Bill C-16, respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts.

Hon. Consiglio Di Nino: Honourable senators, I am happy to rise and participate in the debate on Bill C-16 respecting the registration of information relating to sexual offenders. Bill C-16, as we have heard, is a reintroduction of Bill C-23, which died on the Order Paper when the House was prorogued in mid-November.

Bill C-16 should, in many aspects, be applauded. It represents the federal government’s commitment to create a nationally-based sex offender registry and will provide an important tool for police services and law enforcement agencies across the country involved in the investigation of sexual offences.

However, honourable senators, many aspects of the bill have been criticized. Some critics argue that this bill does not go far enough. This has been forcefully expressed in both committee and debate in the other place. It is said that this is a watered down approach in a situation where vigorous action is needed. It is said that while this bill may save lives, in its omissions it may also cost lives.

Some critics of the bill would like to make the registry accessible to the public, as it is in the U.S. They argue that they cannot keep their children safe unless they can search actively to see if a sexual offender has moved into their neighbourhood. The government and others argue that making this information public would lead to witch hunts and would drive sexual offenders underground and out of sight, and away from the treatment programs and supervision that attempts to reintegrate them into society. We need to explore extensively these divergent and controversial points of view in committee.

There are some other criticisms about the bill. The proposed legislation will only include current and new offenders, not past offenders who have served their sentences. The Government of Alberta, in particular, wanted less retroactivity and pointed to 27 past offenders at risk to re-offend living in the province. Another point is that the register will not include photographs. Also, this legislation does not recommend making use of current cutting-edge tracking required by police investigators. As well, the penalties are not stiff enough for offenders who do not register. All of these criticisms and concerns are valid and require our serious study.

I bring to your attention the comments of Jim Stephenson, the father of Christopher Stephenson, a murdered victim of a sex crime committed by a repeat offender, who testified before the Justice Committee in the other place. Mr. Stephenson has been lobbying for a sex offender registry for 15 years. Because of his lobbying efforts, the Province of Ontario passed "Christopher's Law," which created the Ontario Sexual Offender Registration System.

Mr. Stephenson has described the proposed federal registry as basically "nothing more than a telephone directory that will only be of use to investigators if the perpetrators leave their wallet at the scene of the crime." Mr. Stephenson's depiction may be somewhat of an exaggeration. The registry does require that an offender provide their "height and weight and a description of every physically distinguishing mark that they have." It is an extension of the Canadian Police Information Centre so it contains fingerprints, but there is no requirement that a photograph be included.

The legislation as passed in the other place actually provides discretion to the person collecting information — and I stress that — who "may record any observable characteristic that may assist in identification of the sex offender, including their eye colour and hair colour, and may require that their photograph be taken." This is discretionary. I believe, honourable senators, this information should be collected at all times and not be discretionary.

Honourable senators, Mr. Stephenson's concerns cannot be cavalierly dismissed but must be reviewed, and I hope he will be invited to attend as a witness. I understand as well the difficulties that this legislation poses with respect to civil liberties, and that negotiations had to occur with the provinces. I also understand that the Commons committee heard from many witnesses on both sides of the issue, some of whom opposed the idea of the registry altogether. The John Howard Society has questioned the effectiveness, accuracy and cost of sex offender registries altogether. The government has expressed fears of court challenges against the legislation on constitutional or due process grounds.

Honourable senators, this controversial bill raises many questions for us to consider. I will highlight a few of them. There seems to be little excuse for not including photographs as a matter of course. The discretionary way in which the legislation is drafted is very peculiar, and I will look forward to hearing the officials' justification for this.

I also do not understand why the registry will not employ the cross-referencing powers afforded by modern technology and required by the police investigators. There is no breach in civil liberties in having the ability to use provincial, jurisdictional or radius and postal code search capability. The Ontario Sex Offender Database allows for 93 different searchable fields for data entry. The federal registry should be at least as robust. I would like to know more about the limitations of the system as proposed, and how it could be improved.

Further, the government has stated that it fears a Charter challenge if the legislation applies to retroactive cases, that is to

say if the database includes sex offenders who have already served a sentence. Charter protection is subject to reasonable limits. In my opinion an excellent argument can be made that even if there is a breach of the Charter, it would be a reasonable breach given the objective.

We should draft the legislation to limit challenges but we should not sacrifice our fundamental objectives simply because we may fear challenges. As the representatives of the Canadian Police Association stated before the Justice Committee in the other place:

...the registration of all convicted sex offenders has a valid, non-punitive regulatory purpose and is therefore not a violation of any offender's rights, when one considers the overarching legitimate public safety concerns. This is consistent with the experience and jurisprudence in the United States, including a U.S. Supreme Court decision upholding sex offender registries that go far beyond the Canadian proposal and the Ontario example.

Even if such retroactivity provisions were found to be unconstitutional, only that part of the legislation will be struck down. The Charter does not strike down entire laws when a breach is found. Where possible, it strikes down only the provisions that breach the Charter. Therefore the government's fears may really be evidence of government timidity rather than prudence.

Finally, the Toronto Chief of Police has stated that, in his opinion, the legislation may be unenforceable. Clearly we need to look into this aspect as well.

As a result of these many concerns, our deliberations on this legislation will be of vital importance. I am becoming increasingly frustrated with the government's initiatives that do not truly solve the problems. It seems to me that sometimes we engage in "government by talking point."

Honourable senators, the Senate is meant to provide sober second thought. We need to start exercising that second thought on a much more non-partisan basis. We need to look at bills sent to us and ask if they truly achieve the stated objectives. If not, then we should say that the legislation is simply not good enough and either change it or defeat it.

I look forward to reflecting on this important issue in committee and hope that our deliberations will result in a much more effective law that does what it intends to do — protect those at risk, principally women and children, from a small, evil group in our society.

Motion agreed to and bill read second time.

• (1510)

REFERRED TO COMMITTEE

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

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

PUBLIC SAFETY BILL 2002

SECOND READING—DEBATE ADJOURNED

Hon. Joseph A. Day moved the second reading of Bill C-7, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

He said: Honourable senators, I am pleased to begin debate on this very important bill, Bill C-7, which deserves our very careful attention. The bill is entitled “Public Safety Act, 2002.” In 2002, a predecessor of this bill was first introduced in the other place.

[Translation]

This bill makes amendments to 23 existing statutes and creates a new act. Its purpose is to enhance the government’s ability to prevent terrorist attacks and intervene quickly in the case of a serious threat or attack. It concerns 12 departments and, therefore, 12 ministers.

The wording of the bill before us is the result of a very serious debate that was held in the other place in November 2001, when Bill C-42 was introduced. A balance was struck between public protection and individual privacy.

[English]

This bill proposes to amend 23 statutes and to create a new act that will implement the Biological and Toxin Weapons Convention. The bill was first numbered 42, then 55, then 17, and now it is before us as Bill C-7. It was debated at length in the other place and studied in committee there, where several amendments were made.

Honourable senators, this bill was introduced in this chamber in October of last year and the Honourable Senator Carstairs addressed the chamber on it on October 21, just before prorogation. In her address, the honourable senator went through each part of the bill and analyzed it in a very thorough manner.

At this stage, I do not propose to go through each clause of the bill again, but I do commend the October 21 comments of the Honourable Senator Carstairs to honourable senators who wish to get a good overview of each part. Pursuant to rule 75 of the *Rules of the Senate of Canada*, at this second reading stage I propose to deal with the principles of Bill C-7.

It is clear that certain earlier provisions would have improved security, as I think all honourable senators will agree, but at a cost that debate in this house and in the other place has shown would be too much of an intrusion into privacy. Therefore, many provisions have been removed or amended. For example, the bill no longer proposes the term “military exclusion zones.” It no longer proposes the regulation of non-explosive ammunition components and no longer proposes the collection of information

on passengers for the primary purpose of executing outstanding warrants.

In addition, there has been a clarification of transportation security and of interim order provisions. I propose to deal with the interim order provisions at some length so that honourable senators will understand the concept and how it is proposed that they be dealt with under the various statutes that are to be amended. It is proposed that nine different statutes dealing with interim orders be amended.

Protecting transportation security and our national security continues to be of paramount importance to all of us and is, of course, of paramount importance to the Government of Canada. We must always ensure that our response to security issues is balanced appropriately in relation to other fundamental interests such as privacy and civil and human rights. Through the various safeguards that have been built into Bill C-7, this proposed legislation offers transparency, accountability and privacy protection.

[Translation]

Honourable senators, because of the terrorist attacks of September 11, 2001, and the better-known existence of well-organized and very clever terrorist groups, we must continue to improve our public safety programs.

To illustrate the increase in terrorist attacks, let us look at the al-Qaeda terrorist organization.

During the seven years preceding the attacks of September 11, 2001, there was, on average, one incident a year involving al-Qaeda. During the two years following the attacks of September 11, 2001, this average climbed to five.

[English]

Lest we think that al-Qaeda has not heard of Canada, in his tape released on November 12, 2002, Osama bin Laden said:

What do your governments want from their alliance with America in attacking us in Afghanistan? I mention in particular Britain, France, Italy, Canada, Germany and Australia.

Furthermore, al-Qaeda is only one of 33 active terrorist groups identified as operating in the world. Whether we like it or not, we must consider Canada as a possible target for terrorist attacks. We must consider that some terrorists may wish to access other countries through Canada.

• (1520)

Honourable senators will be familiar with the two-pronged approach to protecting Canada at our borders. First, there is a program to provide protection from the import of illegal objects, including weapons and explosive devices. Second, there is a program to provide protection from the illegal entry of persons, whether it be from immigration or by visitors.

Following September 11, 2001, there have been ongoing adjustments to our government departments to meet the new realities that we face. The new Canada Border Services Agency has been created from units of Customs and Immigration, and is now part of the new Department of Public Safety and Emergency Preparedness Canada. It is this border services agency that administers these two approaches, of providing protection against both objects and people.

Honourable senators, the approach one would use to protect an aircraft is not much different from the approach the Canada Border Services Agency uses to protect Canada at its borders.

[Translation]

Attacks have been made on aircraft and new attempts will be made in the future. In the past, to protect aircraft, eliminating any object likely to be used for terrorist purposes was thought to be enough. Most countries took this approach.

The events of September 11, 2001, quickly destroyed that theory. People are prepared to die and are anxious to die for their cause. They do not need traditional weapons when they act in a group.

Honourable senators, the attention paid to objects and people at our borders in order to protect Canada must now be paid to people and objects on board aircraft in order to protect them.

Today, for every flight leaving a Canadian airport objects being taken on board the aircraft are methodically inspected. That said, nothing in Canadian legislation provides for a security check of the passengers boarding as well.

[English]

For a flight from Toronto to Vancouver, I can buy a ticket on the Internet, check in using the electronic kiosk, have only my possessions screened at the security checkpoint and, at the time of boarding, show any document with both my picture and the name I used when buying the ticket. I can then board the aircraft.

Honourable senators, we now do an excellent job screening for objects that are now prohibited from being carried on board an aircraft; however, we do a lot less than an excellent job assessing the people who will be on board the same aircraft. This is no longer good enough, as past events have shown.

A flight from Toronto to Vancouver involves a large aircraft with a large fuel load. On its journey, that aircraft will fly over several Canadian cities, as well as close to several American cities. By Canadian law, as it now exists, no one can consider who is on board from a security point of view. For example, authorities that know the name of a suspected terrorist who may be in Canada may wish to ask an airline whether the person in question has an airline reservation. Under Canadian law, that could not now be done.

[Senator Day]

[Translation]

Under the terms of the proposed section 4.82 in the Public Safety Bill, air carriers and operators of aviation reservation systems would be required to provide, on demand, information concerning passengers to designated officers of the RCMP and CSIS, only for the purposes of transportation safety or national security.

In order to ensure privacy protection, the designated officers would compare passenger information and the restricted information directly related to their specific mandate under proposed section 4.82.

In other words, passenger information would be compared to the internal information used to determine risks to transportation safety or national security.

The designated officers would also be authorized to divulge passenger information to a third party only for very specific purposes.

[English]

These purposes include the investigation of a threat to the security of Canada, assisting aircraft protection officers in carrying out their duties, or helping health and transport officials respond to a life, health or safety threat. To ensure overall public safety, the proposed Public Safety Act would provide RCMP designated officers with the legislative authority to notify local police if they identify, while analyzing passenger information, a fugitive with an outstanding warrant for arrest in Canada for a serious offence such as murder or sexual assault.

[Translation]

Canadians can be assured that Bill C-7 will make it possible to increase transportation safety while respecting their privacy. That is why proposed section 4.82 contains strict guarantees governing the collection, disclosure, conservation and destruction of passenger information. I would particularly like to draw your attention to certain specific characteristics.

[English]

However, passenger information could not be used to help execute a warrant for just any offence. Under this bill, the RCMP designated officer would only be able to share passenger information with other police agencies to apprehend individuals who are the subject of an arrest warrant for serious crimes that carry a penalty of five years or more. They would only be able to assist with the execution of warrants for specific serious offences that would be set out in the regulations.

[Translation]

Under 4.82, all passenger information will have to be destroyed within seven days after being transmitted by the air carrier, unless such information is reasonably considered necessary for the purposes of transportation safety or an investigation into threats to the security of Canada.

• (1530)

[English]

A certain standard or threshold of suspicion would have to be met before the information could be shared. For example, subclause 4.82(9) stipulates that a designated officer would have to have reason to believe that the information would assist an Aircraft Protective Officer with his or her duties before making a disclosure designed to protect transport security. Written records would be required for retentions and disclosures, making them available for review by the Privacy Commissioner, the Commissioner for Public Complaints against the RCMP and, in the case of CSIS, review by the Security Intelligence Review Committee and the Inspector General of CSIS.

[Translation]

In addition, the legislation would require the Commissioner of the RCMP and the Director of CSIS to have all retained information reviewed annually. They would be required to order the destruction of information that is no longer required to be retained in order to ensure transportation safety or national security.

[English]

The legislation provides authority to put in place measures that many Canadians would agree are based on common sense. The Canadian Air Carrier Protective Program promotes aviation security by placing an armed RCMP officer on board selected aircraft. That is currently being done. The implementation of section 4.82 would make this program more effective and efficient in selecting aircraft and in providing officers on board with any relevant information on who is on the aircraft. This would provide better public safety for Canadians and for visitors. As I noted earlier, all passenger information would have to be destroyed within seven days, unless it was reasonably required for a very narrow purpose.

Honourable senators, I have spent some time talking about section 4.82 of the Aeronautics Act, which is under amendment because it is the area that received most attention both in the media and in the other place. It is important for us to have an appreciation that there have been significant amendments made and there are many checks on the powers that are being given, or are proposed to be given under this particular section.

I believe, honourable senators, that after careful reflection you will agree with me that a balance has been achieved, balancing the fundamental interests such as privacy, civil and human rights with the importance of maintaining security.

To further illustrate the balance that has been achieved in this bill, let me now shift my comments to another area that has received some discussion in the past, and that is with respect to interim orders.

[Translation]

First, I note that two of the acts being amended by Bill C-7, the Aeronautics Act and the Canadian Environmental Protection Act, already contain provisions related to interim orders.

[English]

Therefore, honourable senators, the concept of interim orders is not something new. It already exists in law.

Honourable senators, on September 11, 2001, aircraft were entering Canadian air control at the rate of one every 45 seconds. Immediate decisions had to be taken with respect to either turning the aircraft back to Europe or inviting them to land at the closest airport. Honourable senators will remember the great service that was provided by airports in Newfoundland, in Nova Scotia and in Montreal, in particular, at that very difficult time in our history. Whereas the authority to immediately control air space did exist, the very important lesson learned is that in another crisis the essential authority to deal with that crisis must also exist.

[Translation]

To illustrate this fear about potential events requiring immediate action, I have a few examples of increasingly complex events.

[English]

Let me talk about two or three possible examples that will show you the importance of being able to react quickly.

The first level, in response to a credible marine-based threat against a nuclear power plant, for example, at Gentilly in Quebec or Point Le Preau in New Brunswick, is as follows. Authorities may wish to close an area within a two-mile radius of that nuclear power plant to avoid any activity — that is, anyone moving in that area without authority.

How would that closure be achieved? I refer you to the proposal to add the interim order provision to the Canada Shipping Act, which is in this bill. One could suggest that such a zone could be established permanently, then you would not need an interim order in the case of crisis. However, the St. Lawrence Seaway passes completely within such a reasonable zone around the Gentilly base and there are shipping and fishing lines within a reasonable distance of Point Le Preau in New Brunswick. If we closed the area permanently, we would be closing the St. Lawrence Seaway. That, of course, is not an acceptable situation.

This is an example of where an interim order authority could be used, and moreover the consequences of the order are predictable. That is why we would not want to do it on a permanent basis, namely, the closing of a specified water area.

[Translation]

As a second example, the schedule under the Quarantine Act lists four dangerous diseases: cholera, plague, small pox and yellow fever. Under this proposed legislation, the Governor in Council may amend the schedule by adding other dangerous diseases.

We are not aware of any other dangerous disease that currently needs to be added, but if terrorists were to propagate a certain disease — a highly likely scenario — that disease would need to be added to the schedule immediately.

[English]

How would this addition to the schedule under the Quarantine Act take place when we do not know what type of malady the terrorist might use? I would refer you, honourable senators, to the interim order provision under the Quarantine Act in this bill in that regard. This is an example of where an interim order authority could be used, but we do not know exactly what the content of the interim order will be at this time. In the earlier one, we knew the content would be to close off the waterway or the shipping lanes. In this one, we do not know what the malady is but we know there is a potential need to add something to the Quarantine Act to provide for that unknown eventuality.

For the third and most important level of possible interim order requirements, whereas some predictions can be made concerning accidents and resulting consequences, terrorist actions are not that easily predicted. As occurred on September 11, 2001, terrorist action may create unforeseen situations.

[Translation]

Consequently, we must anticipate that certain unknown events could occur, and interim orders will be essential to our intervention.

Along with this example, I refer the Senate to the motion to add the interim order provision to, for example, the Hazardous Products Act and the Radiation Emitting Devices Act.

[English]

In these three levels, I have observed a specific threat and a known response, a nonspecific threat and a known response. The most unsettling of the three possibilities that could well arise in a terrorist attack is an unpredicted threat and a corresponding, unknown response. That is why we need to provide for interim orders that can be issued on very short notice. However, honourable senators will appreciate that we absolutely need checks on that authority.

• (1540)

I would emphasize to honourable senators that the authority to issue interim orders is not being proposed without several constraints. That is to say, it should not and will not be used lightly. Some of those constraints are as follows: There must be a requirement for immediate action to deal with a significant threat to public safety.

[Translation]

An interim order can be made only if the legislation invoked gives the minister the authority to make an interim order by way of regulation.

[Senator Day]

[English]

The government must approve the interim order within 14 days; otherwise, it will automatically expire.

[Translation]

The interim order must be referred to Parliament within 15 calendar days.

[English]

The interim order must be published in the *Canada Gazette* within 23 days.

[Translation]

The interim order has effect for a period of one year, but, in that time, it may be replaced by a regulation to the same effect. In that case, it will have effect for a period of two years under the Canadian Environmental Protection Act, which already exists.

Honourable senators, there is no doubt about the need for interim orders, and that the restrictions on the powers set out in Bill C-7 will ensure that such situations can be closely controlled. I anticipate that these powers will be very rarely used.

[English]

In my earlier remarks, I paid attention to two specific concepts in this bill. First, I observed that there is a necessity to conduct some sort of assessment of people who are to be on board the aircraft, if we wish to achieve a reasonable level of aviation safety. I expect this principle to be understood and acceptable to us upon reflection. The details of what this assessment would involve will be based on proposed new section 4.82 of the Aeronautics Act. I expect this will be discussed in detail during committee review.

Honourable senators, the second concept I addressed was a need for interim orders. I noted that while these provisions would provide ministers with the tools needed to act quickly, where required, there are constraints that continue the overall balance of this bill, which is balancing between security and privacy.

Honourable senators, it is important to understand that the interim orders that are proposed in the bill are an exceptional tool for exceptional circumstances and that democratic accountability must be involved. This topic can be examined more closely in committee, and I have no doubt that it will be.

Honourable senators, Canada needs an effective security system, capable of adapting quickly to new demands. In the first session of this Parliament, we passed the Anti-terrorism Act, Bill C-36. In that same session, we passed Bill C-44, which amended the Aeronautics Act. Bill C-7 is the third aspect of the reaction to September 11, 2001, and the adjustment to the new realities of terrorist activity.

At the same time, we must be continually looking for ways to improve our approach to public safety and national security. Vigilance and close collaboration within and outside the borders

remain one of our best defences against terrorism. I have already made reference to the adjustments in government departments, adjustments that are just recently taking place, another example of meeting these new challenges.

Honourable senators, Bill C-7 will be a significant step towards achieving a system capable of quickly adapting to the new realities of international terrorism.

I look forward to further debate at the committee stage, honourable senators, with respect to this legislation.

Hon. Tommy Banks: Will the honourable senator accept a question?

Senator Day: I would be pleased to accept a question.

Senator Banks: The honourable senator referred to the importance of finding a balance between the new necessities that have been thrust upon us, on the one hand, and traditional rights, on the other hand.

Honourable senators have just been reminded of the Anti-terrorism Act, which came to us as Bill C-36 in the first session of this Parliament, as the honourable senator stated. It is the hope, the fervent desire of each of us, I believe, that the new reality to which the honourable senator has just referred may not be permanent — although that seems a forlorn hope at the moment.

Out of necessity, the anti-terrorism legislation intrudes farther on individuals rights than we would ordinarily have permitted to happen in this country. My recollection is that there are similar aspects to the present bill, and the honourable senator has referred to some of them.

With respect to the Anti-terrorism Act, we took care to ensure that a comprehensive review provision was in place. As such, within three years of the bill receiving Royal Assent, the committees of both Houses would conduct such a review and report on anything that they had to say to those Houses.

Can the honourable senator tell this chamber whether a similar provision exists in Bill C-7?

Senator Day: Honourable senators, I thank the honourable senator for his question. It is important for honourable senators to appreciate that Bill C-36 was passed very quickly after September 11, 2001. If memory serves, we did a pre-study on that bill, one of the few that goes that route here, because of the concern for acting quickly. This house is always cautious and deals with matters slowly and methodically so that we can be reasonably assured that we are not overlooking some detail.

I spent some time describing the evolution of this bill, which is not in the same category. In other words, Bill C-7 does not appear to be a quick reaction to a situation, in contrast to the anti-terrorism legislation we passed in late 2001.

This bill has gone through several iterations. At each time, we have had a chance to say, "Maybe we went too far with respect to this; maybe we have need of another check or balance."

Nine of the 23 provisions in this bill deal with interim orders, which I spoke on at length because I think that is an important feature of the proposed legislation. There are sunset clauses on those orders. They disappear within one year if nothing else is done.

There are other provisions, such as the necessity for publication and filing the interim orders before each House of Parliament within a certain period of time, all of which illustrate built-in checks. Other portions of this bill implement, for example, the biological and toxic weapons convention. We would not want that to be subject to sunset provisions. That is an important part of overall public security, but it is all part of this bill.

• (1550)

In answering the question directly, I would say that it is not in the same category. It is more like an omnibus bill dealing with many concepts, some of which have sunsets if nothing is done, and some of which do not.

Hon. Mobina S. B. Jaffer: I understand that none of the provisions of Bill C-36 have been used, and there will be a review. Could the honourable senator please tell us why there is a necessity for this bill at this point until that review has taken place?

Senator Day: My understanding is that Bill C-36 deals with Criminal Code provisions and terrorist activities under the Criminal Code. This bill is not a Criminal Code-oriented bill. It deals with many different statutes — 23 different statutes, in fact. It deals with a different subject-matter, such as how departments are to function. For example, portions deal with protecting intellectual property and information technology in the Department of Defence. It is a different bill and a different concept. We normally think in terms of Criminal Code provisions as being something that is much more intrusive to the individual. The intrusive aspect of this bill that we have to be concerned about is the privacy issue.

Senator Jaffer: Perhaps I did not hear correctly. The honourable senator said that this bill was also to deal with people who come to our country without proper papers or who come illegally. Did I hear that correctly?

Senator Day: I did not say "without proper papers," but I did refer to people coming to our borders from an immigration point of view, or as a tourist illegally or in an improper manner.

Senator Jaffer: Am I to understand that this bill is in addition to our immigration bill? Is this another way of restricting entry into our country of people who are trying to seek refuge in our country?

Senator Day: I hope that legitimate refugees and legitimate visitors and legitimate immigrants and new Canadians would not find this bill as being in any way restrictive.

Hon. A. Raynell Andreychuk: I heard the honourable senator say that Bill C-7 is just an intrusion on protection and not on people's rights. Is it not a fact that Bill C-36 certainly intrudes on rights? There are some limitations on ministerial discretion and ministerial action, and there was debate about whether, in fact, we struck the right balance.

In this bill, 23 acts give the minister, by way of interim orders, virtually absolute discretion vis-à-vis Canadian citizens and others, in some cases, I submit. The order stands for 14 days, 30 days or a year, depending on which act you are amending. Within that period, it is within the Minister's absolute discretion. Is this not more intrusive and more dangerous to the individual than even Bill C-36?

Senator Day: I thank the honourable senator for her question. I hesitate to get into too much of the detail at second reading of this bill, and I look forward to debating that issue in committee.

It is important for honourable senators to recall a point that I made earlier: The ministers have the authority to make interim orders only where the subject-matter has, by this honourable chamber, already been allowed by regulation. He or she must have general authority in regulation before an interim order can be made. That is an important check on all of this area that would prevent ministers from taking the extreme position that the honourable senator has suggested.

Senator Andreychuk: To follow up, is it not correct that before the minister could act, there was a certain process that the minister had to go through, and so, therefore, there were checks and balances. Now the minister can act immediately using this absolute discretion under the principle that it is an emergency. Are we not taking away individuals' rights to at least defend themselves in those positions because we say it is an emergency? Why are we not using the Emergency Measures Act, which would give the ministers that kind of power anyway, or why would we not use the National Securities Act?

Senator Day: I have two briefing books on that question, and I look forward to debating those issues. I do not know that at this stage, when dealing with the bill in principle, I could adequately answer your question any better than to say that the Emergency Measures Act would probably be a bit cumbersome when dealing with some of the issues that have to be dealt with under these various interim orders that are described in this particular legislation: the Shipping Act, the Quarantine Act and the various environmental acts. Using the Emergency Measures Act in that instance is deemed to be a little bit heavy-handed.

Senator Andreychuk: These are very difficult and complex issues. Many of them touch on legal aspects of how interim orders could be interpreted, how they could be appealed and whether the person who would be aggrieved would simply be entitled to administrative review as opposed to a full appeal. Nowhere in the bill do we see the kinds of safeguards that we fought for in Bill C-36, which in my opinion were not sufficient, but at least there were some there. These are complex legal issues. Would you

not agree that they deserve our attention? The principle of gaining security for Canadians is not being disputed. We do have to question whether we are obtaining security at the expense of individual rights, and also whether there might be a better way than those methods chosen in this bill.

Senator Day: I think the honourable senator has laid out the grounds for debate at committee level.

Hon. Laurier L. LaPierre: Honourable senators, I am concerned about all those things. I find the word "terrorism" is being used to cover practically every aspect of human living. I have not seen the word "terrorism" defined anywhere. It can mean something today, and it can mean something else tomorrow or the day after. We are now developing what I think is a succession of War Measures Acts in order to be able, at the end of the day, to protect ourselves whilst restricting more and more the liberties of the Canadian people, closing more and more of our borders and our frontiers, and putting us all into a position whereby some of our fundamental liberties may be seriously affected by whatever definition a person in authority may give regarding a certain event not provided for or defined anywhere else in legislation.

• (1600)

Therefore, I ask Senator Day, as a man of great liberty, who has gone to a college that has instilled in him the need for the liberty of the Canadian people and the defence of them, and in the presence of Senator Cools of course, who knows all answers to all these questions, are we not really extending the role of intervention in our privacies and in our liberties with this business of terrorism?

Senator Day: I believe Senator LaPierre has expressed the concerns of all honourable senators in this chamber about individual rights and liberties, the need for collective security, and how they come head —to head with one another from time to time.

The honourable senator made reference to the War Measures Act. It is my understanding that the interim orders and the other measures proposed in the public safety bill are for the very purpose of avoiding that heavy-handed tool, which at the time might have been the only tool available for use in a very short period of time. We are looking for an acceptable compromise that can help our collective society, but it must be as unobtrusive as possible with respect to individual rights.

The Hon. the Speaker: Honourable senators, I regret to advise that the Honourable Senator Day's 45 minutes have expired. In fact, we went a little over the prescribed time. However, I have an indication from Senator Fraser that she wishes to speak. Accordingly, we will hear her intervention and perhaps Senator Di Nino will wish to speak as well. I understand that Senator Andreychuk will want to adjourn the debate.

Hon. Anne C. Cools: Honourable senators, I rise on a point of order. I wonder if I could entreat upon His Honour to make the point that it is not in order for some senators to constantly mention other senators' names during their remarks on the floor.

Senator LaPierre seems to find my name irresistible, and I would love it if he could relinquish the attraction he seems to have for my name. It is not in order for senators to constantly mention other senators' names the way Senator LaPierre mentions mine. I must admit to honourable senators that I find it tedious and boring, and not particularly enlightening, or even witty or amusing.

The Hon. the Speaker: Honourable senators, Senator Cools' intervention speaks for itself. If honourable senators would permit, I would leave Senator Cools' comments as a stand-alone intervention, which senators should acknowledge.

Hon. Joan Fraser: Honourable senators, I had intended to put this as a very brief question or comment after Senator Day's wide-ranging and very thoughtful speech, but Senator LaPierre raised a question that has perturbed us greatly since 2001, when he referred to defining "terrorism."

The Hon. the Speaker: Honourable senators, there is one matter that I do want to ensure I get right. There is a tradition that 45 minutes be given to the first and second speaker, a time limit which will be respected for Senator Andreychuk on the opposition side. However, I point out that Senator Fraser's is a limited-time speech.

Senator Fraser: I apologize that I had forgotten that fact. In no way do I wish to diminish Senator Andreychuk's time because it will be very interesting to hear what she has to say.

I note for senators concerned about this matter that the special committee that studied Bill C-36, on which I had the great honour to serve, spent a lot of time on the question of whether to define "terrorism," and there was a strong sense that in Canada we do not make "isms" illegal. We do not make it illegal to hold a belief. What we make illegal is certain activity. Bill C-36 contains a carefully drawn definition not of "terrorism" but of "terrorist activity," and that is what is made illegal. It is in my view a well-drawn definition, and it would bear re-reading for any senators concerned about these matters.

On motion of Senator Andreychuk, debate adjourned.

SPAM CONTROL BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Gustafson, for the second reading of Bill S-2, to prevent unsolicited messages on the Internet.—(*Honourable Senator Poulin*).

Hon. Marie-P. Poulin: Honourable senators, several years ago I had the privilege of chairing a special study of the Standing Senate Committee on Transport and Communications, which was to investigate and report on the technological revolution that was

literally changing global communications. The results of our committee's work were two tabled documents that examined Canada's position in the wired world, ranging from our electronic infrastructure to the content being carried by wire, cable and satellite.

The first report tabled in 1997, already seven years ago, provided snapshots in time of the fundamental changes that were then occurring. The "death of distance" came to name the impact of the new information age. The study noted that government legislation, regulation and monitoring bodies were lagging behind the phenomenal explosion in technological development.

In 1999 the second report, entitled "Canada's Positioning Within the World's Technological Revolution," was tabled. It focused to a considerable degree on the emergent impacts of the Internet. Indeed, the first recommendation contained in this report called upon the government to proceed with haste, along with other governments, within the appropriate international forum, to address problems associated with Internet content — for example, racism, pornography, violence. In the intervening years, certain laws have been enacted, industry standards have been implemented, technology has been constantly refined and consumer groups have been established to deal with the new information reality.

What was not readily apparent at that time was the scourge of spamming, the practice of bulk commercial and non-commercial messages sent out unsolicited to millions upon millions of computers. For all those who use the Internet, spamming is a curse. First, it clogs up cyberspace. Second, it is a nuisance to personal and business consumers. Third, it costs enormous amounts in human financial capital.

In Canada, it is estimated that spamming has cost the economy \$1 billion through lost productivity in dealing with the vast deluge of unwanted e-mail, higher costs for IT capability, such as bandwidth and more powerful equipment, and help-desk expenses to eliminate gummed up inboxes.

Honourable senators, spam is to modern telecommunications what flyers and brochures were to our household mailboxes several years ago — in other words, junk.

• (1610)

According to some Internet observers, spam is a potential threat to the very viability of the Internet because of the incredible amount of useless, unwanted material that is being rained on unsuspecting on-line users, from individuals to corporate accounts.

That is why, honourable senators, I stand before you today in support of Bill S-2, and that is why the originator of the bill, Senator Donald Oliver, deserves our compliments for the prodigious amount of time and effort he has put into drafting a piece of necessary legislation. Senator Oliver is to be commended for his initiative and for bringing an urgent matter to our attention.

As I mentioned a moment ago, all governments in all countries have problems simply keeping up with the very fast pace of technology. However, here in Canada, progress has been made in protecting Canadians through changes to the Criminal Code and the introduction this year of the Canadian Personal Information Protection and Electronic Documents Act. There is a working group on electronic commerce and consumers and a Web site also designed to protect Internet consumers, but they have limitations.

For the information of honourable senators, the Web site's address is www.ad-ware.com. The working group's "principles for consumer protection for e-commerce" is just that — a set of principles. The Web site, which offers free software designed to identify and delete cookies that identify visitors to a particular site, is sometimes difficult to comprehend. In short, more needs to be done to combat e-mail abuse, and I believe that legislation like Bill S-2 is needed. It specifically identifies problems, imposes a set of standards on Internet service providers and provides penalties for abuse.

Clearly, spam is an intrusion into the privacy of individuals, and all individuals, as well as businesses large and small, must devote time and resources to dealing with it.

Equally as disturbing as the loss of control implicit in the bombardment of unsolicited e-mail is the blatant fraud scam promotions, purveyance of pornography, and identity theft that is inherent in the messages. These are the objectionable aspects of Internet spamming that this bill is designed to combat.

Honourable senators, the appeal of Bill S-2 is the holistic approach it takes to a serious modern day problem. Senator Oliver's position, with which I concur, relies not simply on one avenue but multi-faceted ways to achieve the bill's objectives. These comprise the development of effective technology, such as filters to block the delivery of spam; industry practices, such as rules for ISPs that control unsolicited bulk e-mail; law enforcement with appropriate penalties, and the all-important need for international cooperation.

Proposed deterrents to spamming are provisions that would give Internet users the choice of whether to subscribe to commercial notices. E-mail messages would require buttons to allow recipients to opt in or opt out of subscriptions. Opting in would indicate the user's interest in receiving future e-mails. Opting out would put a stop to any further communication from the purveyor. However, critics have pointed out that this could place an intolerable burden on e-mail accounts, with users having to signal their intentions to the sender of each message.

To simplify the procedure, Bill S-2 proposes an official "no-spam list" that would allow Internet users to register their objections to receiving unsolicited commercial advertising and promotions. Those sending messages would be prohibited from sending e-mails to registrants. Flexibility could be given to the appropriate minister responsible for the bill in determining the parameters of the list in matters such as the duration of a no-spam registration and a process for reversing an opt-in and opt-out preference. Parents could use the no-spam database to

block messages to their children. In short, this legislation would ban e-mails without the explicit consent of the recipient, a practice that is being used in the European Union. This is a privilege that users of Blackberries have. Only those e-mails that are filtered to that device reach it. Therefore, the user consents, even chooses.

Honourable senators, it is important to remember that the main objective of Bill S-2 is to give Canadians control over the messages they receive rather than having the power vested in the sender. Although Canada has some safeguards to cut down on unwanted commercial messages or at least to track their source, it trails many other countries in introducing and enforcing spam legislation.

Thirty countries in the Organization for Economic Co-operation and Development have tabled guidelines for international cooperation in protecting consumers against spam originating outside their borders. Australia has hefty fines of up to \$1 million a day for anti-spamming violations. The United Kingdom has penalties of \$11,000 or more. Italy can levy fines of up to \$110,000. California has joined the war on junk e-mail with fines of U.S. \$1,000 per message or up to a \$1 million per campaign — the toughest anti-spam penalties enacted among 35 states.

The suggested penalties of \$500 and \$5,000 in Bill S-2 are for discussion purposes and could be lowered or raised depending on recommendations from the standing committee that will study the bill.

Plainly, people are fed up with electronic garbage in their mailboxes which, as Australia's communications minister said, "is commonly used to promote illegal, offensive and unscrupulous ventures, such as black-market drugs, porn, bogus prizes, money laundering and other false and/or fraudulent material."

Also, of course, indiscriminate e-mails can crash computers, slow Internet traffic and infect every computer they touch with destructive viruses. Estimates suggest that spam can account for 60 to 70 per cent of e-mail traffic by the spring or the middle of next year. According to the U.S. Federal Trade Commission, two thirds of spam may contain misleading or outright false statements.

Honourable senators, the bill before us is important. Spamming is becoming an increasingly larger problem. Heightened attempts to educate consumers on the dark side of the Internet have failed to reduce the number of spam messages getting through to them. In fact, if, as some argue, the solution lies in more sophisticated filtering software to block unsolicited e-mail, then it would seem that the problem should already have been solved.

• (1620)

Alas, for each technological improvement, spammers have figured out how to circumvent software programming. Internet service providers are trying to clamp down on the problem, but they, too, are being thwarted by lack of strong laws, even if they could keep track of spammers.

Some interested parties in the Internet business have reservations about legislation. They say anti-spam laws will not work; that the very idea of a government overseer, in the form of an industry monitoring agency, would favour the major players at the expense of smaller competitors; that small- and medium-sized businesses would be shut down; and that an approved e-mail filter is required of all ISPs. I submit these concerns are details that should not be allowed to derail a creative and bold attempt by Senator Oliver to curb a serious problem, a problem that impacts on businesses, the general economy and individuals, especially children.

Bill S-2 would create an Internet environment where users could block all unsolicited e-mail by registering on the no-spam list or by selecting the commercial e-mail they want to receive. This bill would bring Canada into line with many other countries which have enacted anti-spamming legislation to control an obvious global problem, albeit with varying degrees of success. For Canada, it would be a new tool in the arsenal against a blight on one of the most significant technological advances of all time, communication through cyber-space.

Legislation, together with continuing advancements in filtering technology and unflagging attention to educating our children against pernicious messages and predatory surfers, will at least help control the vulgarity, fraud and deceptive practices now assailing us at home and at work.

We cannot wait until sure-fire technology is developed and mass marketed and industry standards are agreed upon. The time for action is now, since the problem is real. In the same way, honourable senators, the solutions should also be real.

I urge honourable senators to endorse the principles of Bill S-2 and to refer the bill to committee for further study.

On motion of Senator Stratton, debate adjourned.

STATUTES REPEAL BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Moore, for the second reading of Bill S-11, to repeal legislation that has not been brought into force within ten years of receiving royal assent.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, I will not regale you with the story of the provenance of this bill, no matter how scintillating it is. It is called Bill S-11. In its previous incarnation it was Bill S-12. Like the bill to which Senator Poulin has just spoken, among the bills which we have been hearing about for the last few days, this is a sort of unusual bill in that it is not now exactly as it existed in the previous session of Parliament. It is very close, and its intent is exactly the same. However, it is slightly different.

Honourable senators, I will cut directly to the chase in respect of the point of the bill. The object of this bill is to bring about the repeal of certain pieces of legislation, specifically those pieces of legislation which are acts of Parliament and which have received Royal Assent, that are in place but are not in force, although they could, at any time, be brought into force.

Why would an act of Parliament not be in force? It is because of one of the last paragraphs of every bill called “coming into force” which says either specifically, or to the same effect, “This act will come into force at a day and time to be determined by the Governor in Council.” There are many good reasons why governments need to have that flexibility, and need to have it for a considerable amount of time. It may be something as mundane as, “We would really like to do this but we do not have the money to do it right now;” or as arcane as a number of conditions precedent having to do with international conventions and the like. For whatever reason, many of the bills that come before us contain that provision. They are passed by Parliament. Therefore, there is a granting of authority of great discretion to the government as to when that act will be brought into force.

The questions that gave rise to this bill are these: How long should the government enjoy that discretion? How many successive governments, after the one to which that discretion was originally given, should continue to enjoy it? For how long should that go on? This bill has made the arbitrary choice of saying that that should be 10 years; that that is a reasonable enough time. It could be five, it could be 20. The thrust of the bill is that there should be some time at which, with respect to that authority which has been delegated by Parliament to the Governor in Council, the Governor in Council, the government, ought to be obliged, I believe, to come back to Parliament and explain that they still need to have that arrow in their quiver. They still need to be able to bring that act into force and effect, notwithstanding that the time at which the bill was first devised, introduced, debated and passed was in circumstances that are utterly different, given the time lapse, from the circumstances in which the act would be brought into force. The circumstances that obtain will, by definition, be different, and sometimes vastly different.

The number of statutes that are on the books today about which that is true and which are older than 10 years depends on which of the lists I have before me that you look at. I have four such lists. In all, there are 50-some statutes, acts of Parliament or sections of acts of Parliament which exist and which could be brought into force by a government other than the one which was in place when the bill was first devised, in circumstances that are different from those in which the bill was first devised and in which Parliament first passed them.

There is no doubt that government needs to have that flexibility from time to time in respect to some bills. The question of the length of time gives rise to the rhetorical question that I ask: Has the government been granted the right to determine whether, as opposed to when, an act will be brought into force?

One of the responses from officials from the Department of Justice to questions asked in the committee studying the bill in the last Parliament about what the effect would be on certain acts was, "Yes, we should repeal that bill because the government will not bring that act into effect." In other words, the government intends to act in ways other than those in which Parliament determined that it should act. The government has decided not when to bring a particular act into force, but whether to bring same act into force.

• (1630)

During the course of the discussions of Bill S-12 in the Legal and Constitutional Affairs Committee in the last session, a circumstance was cited that involved a case in England that was referred to the law lords. It was not precisely analogous to this situation, but it contained in it references to a similar situation.

I should like to read into the record for the interest of honourable senators some excerpts of what the law lords observed. These examples are attendant to the bill before us.

Lord Keith of Kinkel observed — and this is fundamental — that "the executive is unquestionably answerable to Parliament." In other words, as I read it, the executive does not have the option to decide, Parliament having passed an act of Parliament, that the government will not bring into force acts contrary to the will of Parliament.

Lord Browne-Wilkinson said that:

To hold that the executive has an absolute and unfettered discretion, whether or not to bring a section of an act into effect, would lead to the conclusion that both Houses of Parliament had passed the bill through all its stages and the act received Royal Assent merely to confer an enabling power on the executive to decide at will whether or not to make the parliamentary provisions a part of the law.

He further observed that:

Such a conclusion is not only constitutionally dangerous, it flies in the face of common sense. It would be most surprising if, at the present day, prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament expressed in this statute and, to an extent, to pre-empt the decision of Parliament.

Lord Mustill, in his judgment, observes that:

Parliament has its own special means of ensuring that the executive, in the exercise of delegated functions, performs in a way which Parliament finds appropriate, for it is the task of Parliament and the executive, not the courts, to govern the country. In recent years, however, the employment and practice of these specifically parliamentary remedies has, on occasion, been perceived as falling short and sometimes well short of what was needed to bring the performance of the executive into line with the law and with the minimum standards of fairness implicit in every parliamentary delegation of a decision-making function.

Lord Lloyd of Berwick said that:

It might cause surprise to the man on the Clapham omnibus that legislative provisions in an act of Parliament which have passed both Houses of Parliament and received the Royal Assent can be set aside in this way by a member of the executive. It is, after all, the normal function of the executive to carry out the laws that Parliament has passed. The mistake, if I may, is to treat the sections as if they did not exist. True, they do not have statutory force, but that does not mean that they are writ in water. They contain a statement of parliamentary intention, even though they create no enforceable rights. Approaching the matter in that way, I read that section as providing that —

— and he reverts to the sections of the act —

...shall come into force when the Home Secretary chooses and not that they may come into force if he chooses. In other words, the section confers a power to say when but not whether.

I could go on and quote a great many more of their lordships' observations to the same effect, but they give rise to the question that I posed earlier — which is this: How long is a reasonable time for Parliament to permit the continuance of a discretion that it has granted to a government, and then to the government after that, and then to the government after that, and then to the government after that? If we deal with this, honourable senators, and if we were to pass this bill after a study by the appropriate committee, we would be cleaning out the attic, in effect, and obliging the government to come back to Parliament and say, "We still need to have that."

The leeway that is given in the present bill to government is considerable because the present bill says that it will not come into effect until two years after the Royal Assent, then a list would be placed before both Houses of Parliament at the beginning of each calendar year setting out those bills that, at that point, are at least nine years old, having received the Royal Assent and not yet brought into force. There is lots of notice to the government to use it or lose it.

I hope honourable senators will agree that this bill should be sent to committee for study at the first opportunity.

Some Hon. Senators: Hear, hear!

On motion of Senator Cools, debate adjourned.

[Translation]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Pierre Claude Nolin moved the second reading of Bill S-12, to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).
—(Honourable Senator Nolin).

He said: Honourable senators, it is a pleasure and an honour for me to speak at second reading of Bill S-12, which seeks to thoroughly modernize the Royal Canadian Mounted Police Act as regards labour relations.

First, I want to point out that Bill S-12 is a replica of former Bill S-24, which I tabled last October 23 in this chamber. As you know, this legislation died on the Order Paper on November 12, when we prorogued.

Since tabling this bill in October, I have received expressions of support from, as you can imagine, members of the RCMP, but also from associations representing the various Canadian police forces and from citizens.

I should add that some of you encouraged me to pursue my efforts. These testimonies, and I thank those of you who expressed their support to me, have convinced me of the need, for the sake of public security, of conducting such a reform in the coming months.

The RCMP was established in 1873. For over 130 years its traditions, the professionalism of its members and its excellent international reputation have been a great source of national pride for Canadians and an important symbol of our country. In recent years, a number of RCMP members have strongly and energetically criticized the provisions relating to their labour relations. For example, they criticize, and with good reason, the high costs to Canadian taxpayers, and also their lack of transparency, fairness and impartiality.

Through the research and consultation work that I did before tabling Bill S-12, I discovered, as I will show later on, that this regrettable situation is the root cause of abuse on the part of the employer, of the deterioration of the members' morale, and of lowered personal and professional self-esteem among the staff.

• (1640)

These areas of concern are also responsible for the frustration and cynicism RCMP members feel with respect to the current procedure for determining working conditions, on the one hand and the outdated — I would go so far as to say paternalistic — and highly controversial mechanisms for settling grievances and dealing with disciplinary matters on the other.

Honourable senators, the members of the RCMP deserve our devoting some time to these serious problems that might work against the primary objective of our national police force, which is to protect Canadians. I strongly believe that the safety of our fellow citizens depends not only on the implementation of better accountability procedures within the RCMP, but also on the quality of labour relations within that organization.

The main purpose of Bill S-12 is quite simply to improve labour relations so that the RCMP can carry out its mandate effectively.

Honourable senators, I am proud to say that this bill constitutes the first major reform of employer-employee relations in the RCMP since Bill C-65 was passed in 1986.

The purpose of Bill C-65 was to implement a series of recommendations set out in 1976 in the report of the important Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedures within the Royal Canadian Mounted Police, better known as the Marin Report.

I do not, honourable senators, intend to repeat my speech of October 29, but I would like to focus on certain elements of the bill in order to explain why it is necessary for the Senate to adopt it.

According to the official figures, setting aside the senior ranks, the provisions of this bill will apply to approximately 15,000 members of the RCMP. Federal public servants who work primarily within administrative units of the RCMP would be excluded from the application of Bill S-12 because their working conditions and their internal grievance or disciplinary procedures are already governed by the Public Service Staff Relations Act.

Because of the historic nature of the reform I am proposing today, Bill S-12 includes a preamble, which sets out the principles on which implementation and interpretation of the provisions of this bill are founded.

First, Bill S-12 recognizes that the right to certification and the right to collective bargaining are basic principles on which the workplace is organized, in the private and public sectors in Canada.

Second, it points out that the members of the RCMP, unlike members of most civilian police forces in Canada, do not have these rights, and that this situation is a source of injustice and continuing frustration and may even threaten the safety and security of Canadians.

Third, it states that the establishment of good staff relations within the Royal Canadian Mounted Police will enhance protection of the public, since the peace officers will spend more of their time carrying out their duties to the public, as they will be aware that the representatives of an accredited police association will be defending their interests with respect to working conditions and internal grievance and disciplinary procedures.

Finally, the preamble states that the RCMP, in order to enjoy the trust and respect of the public, must be accountable to Canadians, not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the principles governing due process of law, notably fairness, impartiality, independence and expeditiousness.

Considering the preamble I have just summarized, Bill S-12 recognizes, for the first time in history, the right of members of the RCMP to speak out democratically and freely on the possibility of unionizing.

Since 1873, the federal government has always denied members of the RCMP the right to certification and collective negotiation.

In 1918 a federal order-in-council strictly forbid participation by members of the force in trade union activity, on penalty of summary dismissal.

To justify this policy, the federal government stressed, as its modern counterpart still does today, the need to protect the public by maintaining a stable national police force, the specific tasks of the members of the RCMP, the need to subject them to a paramilitary type code of discipline and the existence of possible conflicting loyalties, with some members of the RCMP showing more loyalty to their police association than to those in command, should there be a labour dispute.

In 1967, after more than 25 years of waffling, federal public servants gained the right to accreditation and collective bargaining, with the enactment of the Public Service Staff Relations Act by the federal government.

Pursuant to the order in council of 1918, this legislative text passed in 1967 contains a provision expressly excluding the RCMP from the application of what would become the new staff relations regime within the federal public service.

In 1974, in order to counter the efforts of certain members of the RCMP to obtain the same rights as other federal public servants, the federal government abrogated that order in council and that same year established the Division Staff Relations Representative Program.

Honourable senators, the organizational structure of this program would appear at first to be similar to that of an association accredited under the Public Service Staff Relations Act. It is composed of members of the RCMP who have been selected as DSRRs in order to represent their colleagues before the employer, on the one hand, and to advise the employer about labour relations, on the other.

However, a more in-depth analysis of the way this program operates shows that it is quite different from the system for the federal public service. First, the staff relations representatives cannot be compared to union representatives because they are part of the RCMP hierarchy. Furthermore, the program is entirely funded by the employer.

According to documents obtained under the Access to Information Act, this initiative is costing Canadian taxpayers at least \$3.2 million annually.

Finally, there is no independent mechanism to resolve disputes between staff relations representatives and the employer. Consequently, the administrative authorities and the RCMP high command have, to their employees' detriment, great latitude not only in establishing working conditions, but also dispute resolution mechanisms or disciplinary actions.

• (1650)

Honourable senators, as I mentioned earlier, the members of the RCMP are denied the right to certification and collective bargaining currently enjoyed by most peace officers working within other civil police forces in Canada, the United Kingdom, New Zealand and Australia.

I invite you to consult an excellent study by the Parliamentary Research Branch of the Library of Parliament on this important issue. The study is on unionization at the RCMP and was handed out to you in October 2003. Those of you who did not receive the study or who have already passed it on to someone else, simply need to contact the staff in my office to obtain another copy.

This study shows that over the years, the RCMP has evolved a great deal — like the rest of Canadian society, it goes without saying. From the basic paramilitary force it was in its beginnings in 1873, the RCMP is now a national civilian police force that provides essentially the same services as other Canadian police forces.

Most of its activities are directed to its contracted services — contract policing operations — in eight Canadian provinces, excluding Quebec and Ontario. More than 200 municipalities, 65 Aboriginal communities and 3 airports use this type of contract service.

Currently, more than 60 per cent of RCMP members are assigned to law enforcement under these contract agreements. They provide essentially the same services as the municipal and provincial civil police forces that are entitled to accreditation and collective bargaining. In order to correct this situation, some members of the RCMP have gone to court over the ban on forming an employee association.

In 1985, Members of "C" Division — which comprises the Quebec detachment — formed the Association des membres de la Police montée du Québec under Staff Sergeant Gaétan Delisle. In 1987, Mr. Delisle undertook a lengthy legal battle to have the exclusion under the Public Service Staff Relations Act for members of the RCMP struck down. In support of his case, the plaintiff stated that this violated section 2(d) of the Canadian Charter of Rights and Freedoms, which guarantees all Canadians the freedom of association.

However, given his awareness of the importance of his profession, the need to protect the public and the practices of other Canadian police forces, Mr. Delisle — and the members of his association — never demanded the right to strike.

It is remarkable that, despite the considerable difficulties they have faced since the early 1970s, members of the RCMP have always used peaceful and legitimate means to promote their cause.

In comparison, in the UK, members of both the English and Welsh constabularies obtained the right to accreditation and collective bargaining in 1919 — over 84 years ago — after an illegal strike and other pressure tactics involving civil disobedience.

In September 1999, in a majority decision, the justices of the Supreme Court of Canada in *Delisle v. Canada (Deputy Attorney General)* categorically dismissed the argument that the right of association guaranteed in the Charter expressly guarantees RCMP members the right to form an accredited association under the Public Service Staff Relations Act and thus to have access to collective bargaining.

In the opinion of the majority, this kind of recognition would unduly limit the ability of Parliament or a provincial legislature to regulate labour relations in the public service.

Given that Quebec members of the RCMP had been able to freely form an independent employee association, the majority of the court found that their right of association had not been interfered with and that it was the exclusive prerogative of the Parliament of Canada to recognize the right claimed by Mr. Delisle through legislative amendments.

Rather amazingly, in December 2001, a majority of justices of the Supreme Court of Canada, in *Dunmore v. Ontario (Attorney General)*, contradicted their own majority opinion in *Delisle*. They found that recognizing freedom of association for the Ontario farm workers called expressly for the creation of a union.

Honourable senators, the majority opinion of the Supreme Court in *Delisle* that modifying the labour relations regime for members of the RCMP was the prerogative of Parliament led to the introduction of Bill S-12.

Nonetheless, other factors, in addition to those that I mentioned at the beginning of my speech, also prompted me to move ahead on this issue.

While the legal proceedings in *Delisle* were underway, two other associations of members of the RCMP were created in Canada, one in Ontario in 1990, and the other in British Columbia in 1992, illustrating the flaws in the Staff Relations Representative Program and the desire to change the staff relations regime within the RCMP.

On September 22, 1989, former RCMP Commissioner Norman Inkster made a surprising statement in connection with the *Delisle* case before the Quebec Superior Court.

According to him, the federal Parliament was ultimately responsible for the staff relations framework applying to the RCMP — so far so good. If the law were amended as Mr. Delisle wanted it to be, this would not affect the administration of the RCMP inordinately.

This position was recently reiterated by the caucus of RCMP Staff Relations Representatives, as reported by *Pony Express* magazine in its November 2003 edition. This is the national, official, internal magazine of the force. It reported that during a meeting in Ottawa in the fall of 2003, the caucus of RCMP Staff Relations Representatives said it did not object to RCMP members voting on the question of unionization if Bill S-12 were to pass.

In 1995, the important task force report on revision of the Canada Labour Code, Part I — better known as the Sims Report — entitled “Seeking a Balance” recommended unionization for the RCMP, under some other legislation than the Canada Labour Code.

The task force felt that adoption of such a policy would not have any negative impact on operational control of the RCMP or protection of the public interest.

Taking all these factors into consideration, Bill S-12 provides for the right to accreditation and collective bargaining by creating, within the RCMP Act, a system that is distinct from the one set out in the Public Service Staff Relations Act.

In order to foster the implementation of harmonious staff relations within the RCMP and to ensure the credibility, transparency, independence and smooth operation of this initiative, it will be administered by the PSSRB, the Public Service Staff Relations Board, referred to hereinafter, in my speech, as the “Board”.

• (1700)

The bill sets out a complete and transparent procedure to enable, as I mentioned earlier, that RCMP members speak democratically and freely on the creation of a police association. If they vote “no,” everything we adopted would be voided. The bill gives RCMP members the right to speak out on the possibility of unionising. In this regard, the bill does not require that such an association be created within this police force.

If the majority of members vote in favour, the association would act as the bargaining agent certified by the Board to negotiate improvements to the working conditions of the members of the RCMP. The association will also be responsible for defending employees during the resolution of grievances or the imposition of disciplinary measures.

Given the particular way the work is organized within the RCMP, the duties performed by its employees, along practices observed in other jurisdictions in Canada, the United Kingdom and Australia, this association will consist solely of members of the RCMP and will also not be allowed to affiliate with the larger unions representing the majority of federal public servants.

This bill also contains measures to protect members from intimidation or any other unfair practice by the employer aimed at preventing the members of the RCMP from associating.

Once the certification process has been duly completed, Bill S-12 sets out a procedure similar to the one that currently exists within the federal public service aiming at the negotiation in good faith of the first RCMP collective agreement and its renewal.

The bill also includes recourse to conciliation or binding arbitration should negotiations reach an impasse. The Board will oversee the application of these two distinct types of dispute resolution.

The Board could appoint a conciliator to bring both parties closer together or, under certain criteria, an independent arbitrator to resolve legal disputes. Decisions taken under the arbitration process will be binding and not open to appeal.

Honourable senators, the collective bargaining procedure proposed in Bill S-12 seeks not only to promote the positive resolution of labour disputes within the RCMP, but to ensure better public protection.

The implementation of a binding arbitration process — the practice in most of the other civilian police forces in Canada, the United Kingdom, Australia and New Zealand — would deny the members of the RCMP the right to strike in the event of an impasse in negotiations with the employer. I repeat, Bill S-12 does not grant RCMP members the right to strike.

This ban applies to work slowdowns and any other activity to reduce productivity.

The bill is very clear on this and imposes criminal measures for illegal walkouts.

Should members of the RCMP commit acts of vandalism or mischief or disturb the peace during collective bargaining, they will be subject to criminal charges or discipline under the Royal Canadian Mounted Police Act.

Honourable senators, I previously cited a series of arguments that have been used to support the federal government's continuing refusal to propose a reform similar to the one proposed in Bill S-12.

Honourable senators, in 2004, this refusal and the government's arguments behind it are no longer justified, have no reason to exist and are, in fact, detrimental to public safety.

In my view, the professionalism and restraint shown by certain members of the RCMP in this contentious issue, the aforementioned comments by former Commissioner Inkster, the recent comments by Staff Relations Representative Program Caucus, the recommendations of the Sims Commission, the evolution of the RCMP and the no-strike clause in this bill show beyond a doubt that the creation of an accredited police association would not have a harmful effect on public protection, the administration of the RCMP or discipline.

What is more, the federal government is trailing not only in the provinces and municipalities, but also other Commonwealth countries.

In addition to England and Wales, which I have already referred to, Australia recognized its police forces' right to accreditation and collective bargaining in 1942. New Zealand did so in 1935.

Regarding the presumed conflict in loyalties and the chaos that would result from the creation of a police association within the RCMP, this argument is unfounded, since the practice in other jurisdictions proved that this never really materialized.

Truth to tell, as a responsible parliamentarian who is concerned with public safety, I am more concerned by the fact that police officers must currently fight for their basic rights to be recognized during a disciplinary hearing or a grievance, too often to the detriment of public protection. Anyone looking for a problem consisting of poorer quality protection of Canadians will find one now. I will cite a few cases shortly that will make your hair stand on end.

That said, let us move on to the second part of the bill, which deals with grievance and discipline procedures under the RCMP Act.

Honourable senators, the debate on the unionization of RCMP officers has often been linked to ineffectiveness, a lack of impartiality, speed, and transparency and, above all, independence with regard to the highly complex processes of grievances and discipline.

At the present time, over 1,100 grievances from civilian members with concerns about a unilateral decision by RCMP high command to change their job classifications has swamped the internal procedure for the processing of these files.

According to a series of reports released by the RCMP external review committee in recent years, the time taken to settle grievances or to impose disciplinary sanctions all too often exceeds the statutory time limit and can take several years.

The committee also reports that, besides the significant costs to the RCMP, this worrisome situation is a source of considerable tension for members, their family and colleagues, particularly in the case of disciplinary action resulting in suspension without pay or even dismissal. I want to stress that this may also affect the confidence of Canadians in an effective and professional national police force.

Currently, an RCMP member may file a grievance concerning the working conditions enforced by his employer. What happens when such a grievance is filed?

The legislation states that the RCMP Commissioner is the final level of appeal for decisions made by a lower level with respect to a grievance.

Before making a decision, the Commissioner must refer certain categories of grievances to the RCMP's external review committee.

• (1710)

Even though the members of this committee are appointed by the Governor in Council, they can only review the cases referred by the Commissioner.

Moreover, the review committee only has the authority to recommend to the Commissioner, and thus has no means of making its advice binding.

In order to correct this situation, the bill eliminates the review committee and replaces it with an independent, external adjudication process, similar to the one that exists for the federal public service.

In this system, a grievance that has gone through the entire internal grievance process may be referred to a board of adjudication, where the employer and the police association are represented, and costs are shared on an equal basis by both parties.

The operation of this new process will be overseen by the Public Service Staff Relations Board, and the decisions made as part of this process will be binding.

With respect to serious disciplinary action for offences under the code of conduct, the Royal Canadian Mounted Police Act provides that, following the presentation of a complaint by the employer, a board of adjudication composed of three RCMP officers shall be established. This board shall determine the appropriate penalty to prevent any repeat offence. The member may appeal the board's decision to the Commissioner.

As in the case of a grievance, the review committee may make recommendations to the Commissioner before the latter makes a decision. In a case of discharge or demotion, the decision is made by a discharge and demotion board, also consisting of three RCMP officers. As in the case of serious disciplinary action, the member may appeal to the Commissioner.

Honourable senators, these quasi-judicial decisions that often challenge the fundamental rights of RCMP members can have highly negative effects on the quality of life and work of RCMP members who must face this complex process, noted for its lack of independence alone and with few resources.

Honourable senators, I would like to cite three cases to illustrate that this situation cannot go on.

In *Laberge vs. The Appropriate Officer of the Royal Canadian Mounted Police*, in 2000, and *Lefebvre vs. The Appropriate Officer of the Royal Canadian Mounted Police*, again in 2000, two internal boards of adjudication rejected outright the procedures prescribed for two members of the RCMP. They had been suspended and then dismissed following disciplinary procedures that lasted nearly five years.

The two other cases I want to cite involve harassment or sexual misconduct within the RCMP. Once again, unfortunately the victims are women.

On August 29, 2003, the *Journal de Montréal* published an important news item to the effect that disciplinary procedures under the Royal Canadian Mounted Police Act would be ineffective in resolving the sexual harassment problems within the RCMP.

The situation is such that in a letter obtained by the newspaper, RCMP Commissioner Giuliano Zaccardelli said:

Cases of harassment, including sexual misconduct, have been brought to my attention, but reports I have received on how some of these situations were handled are even more disturbing.

This is from a letter from the RCMP Commissioner. That said, the first case I would like to present to you is that of Ms. Terry Lebrasseur. In June 2003, this RCMP officer, who was part of the team protecting the Prime Minister and his wife, filed a complaint against the RCMP with the Federal Court for failure to comply with disciplinary procedures provided by law.

Ms. Lebrasseur had joined the RCMP in 1993. From 1998 to 2001, she says her performance reviews were always excellent. In May, 2001, an inspector advised her to leave the Prime Minister's protective team or she would receive a reprimand, and what was the reason? She had simply annoyed a colleague while doing her job.

Ms. Lebrasseur refused — and rightly so, I might add — and later she was removed from the team. Despite her request for a review of the disciplinary measure ordered by the inspector, the RCMP refused to take the matter to a board of arbitration as provided in the law.

In her suit against the Attorney General, Ms. Lebrasseur alleged that her demotion was due to the fact that between 1998 and 2000 she had tried to inform her employer about the sexual harassment she had been subjected to by an RCMP superintendent. She stated that the police force authorities knew about the situation but did nothing to correct it.

Ms. Lebrasseur therefore is suing her employer for damages because of the economic, psychological and medical problems she claims were caused by the disciplinary measures to which she was subjected.

The *Lebrasseur* case is not unique. Last September, four RCMP officers in Calgary took legal action against their employer before the Alberta Court of Queen's Bench.

In what is called the *Doe* case, four female officers had been sexually harassed by the same sergeant, and after many delays, disciplinary measures were taken against him.

Honourable senators, I would not wish to judge the merits of this case. The courts will decide. I simply want to ask this question: is it usual that in a police force, in 2004, the commissioner has the final say on everything, while we require transparency, rapidity, and independence of all those who decide on rights? Why not require the same of the police force we are so proud of?

In a second example, another case going on in Alberta involves three RCMP officers. The female complainants allege that a number of RCMP officers wanted to cover up the matter by using disciplinary retaliation against them in order to preserve the image of the national police force.

Other officers tried to interfere in the disciplinary procedures, apparently, by failing to comply with legislation on the handling of disciplinary inquiries or cases taken to a board of arbitration.

Finally, the staff relations representatives — and this is the most shameful — apparently refused to get involved. They are paid by their employer and they try to look like union representatives. These representatives refused to support certain complainants during the various stages of the disciplinary procedures — that is the last straw. It goes without saying that the four officers went to court. And who will pay the legal fees? They will.

As in *Lebrasseur*, they are suing — and rightly, I hope — the RCMP for damages.

Honourable senators, these three cases, particularly those relating to harassment or sexual misconduct, prove the inefficiency of the act because members have to resort to the courts to have their fundamental rights respected. Bill S-12 will put an end to that.

Without in any way interfering with disciplinary measures or discharge procedures, and while protecting public safety, Bill S-12 does away with the adjudication committee and the discharge and demotion board and the process of appealing to the Commission of the RCMP.

From now on, the sanctions will be determined by the employer and will follow an internal review process. However, for reasons of efficiency, impartiality and independence, this decision could be subject to the new external and independent grievance arbitration process.

[Senator Nolin]

Finally, in the interests of transparency for the members of the RCMP and the general public, Bill S-12 provides that the Public Service Staff Relations Board would be required to present an annual report to Parliament on the administration of the various provisions of this bill, as it currently does with respect to administration of the Public Service Staff Relations Act.

• (1720)

Before I conclude, honourable senators, I want to respond to various statements made by members of the National Executive Committee of the Staff Relations Representatives Program who said they were not consulted before I presented my bill.

According to Joe Mitchell and Tim Kennedy, two members of this important committee, whose comments were reported in the previously mentioned edition of *Pony Express*, the RCMP's official magazine, the modest reforms recently undertaken by the RCMP to improve the process for settling grievances and dealing with disciplinary action would be sufficient to improve labour relations and the quality of life of members.

However, many of those I consulted over the past few months and who will testify during committee consideration of Bill S-12 say that these changes will do little to restore the confidence of the majority of RCMP members in the current staff relations regime, which is not perceived as effective, equitable, impartial or, worst of all, independent.

In other words, honourable senators, these amendments, as laudable as they may be, will not resolve the fundamental problems undermining RCMP morale.

In conclusion, honourable senators, Parliament must act quickly in this case. Our work has always been non-partisan and expeditious when it comes to improving the legislative tools the RCMP needs in order to effectively fight crime in our communities, organized crime and terrorism. In that sense, I strongly believe that the same spirit must guide our work during all stages of consideration of Bill S-12.

This legislative initiative will foster harmonious staff relations built on trust, dialogue and mutual respect. This is just as important as increasing the RCMP budget or amending the Criminal Code to enable this police force to effectively fulfill its mandate.

Ultimately, Bill S-12 will benefit not only the RCMP but also, and above all, Canadians who deserve a first-class federal police force.

On motion of Senator Rompkey, debate adjourned.

[English]

CRIMINAL CODE

BILL TO AMEND—SECOND READING— ORDER STANDS

On the Order:

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

Kinsella, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Sparrow*).

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

Some Hon. Senators: Question!

Hon. Anne C. Cools: No.

The Hon. the Speaker: Senator Cools, do you wish to speak?

Senator Cools: Honourable senators, Bill C-250 currently stands in the name of Senator Sparrow, and he wishes to speak to the bill. I appeal to honourable senators to allow Senator Sparrow to speak. He is not here at the moment, but I am sure he will be able to speak to the bill in the near future. I appeal to the chamber to allow the dean of the Senate to speak or to let the matter stand.

The Hon. the Speaker: Is the matter to stand, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Order stands.

Order stands.

2002 BERLIN RESOLUTION OF ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY

REPORT OF HUMAN RIGHTS COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Human Rights (clarification of its mandate), presented in the Senate on February 17, 2004.—(*Honourable Senator Maheu*).

Hon. Shirley Maheu: Honourable senators, our committee has asked that I request a further clarification of the mandate that was given to us on February 17.

The motion before us refers in most paragraphs to the Jewish community and to anti-Semitism. Some members of the committee feel that the Jewish community is not the only Semitic group. They have asked whether, under the circumstances, we should look at all groups. I am looking for some guidance from the Senate on this issue.

Hon. Marcel Prud'homme: Honourable senators, I was of the opinion that I would remain silent for the month of February. However, first, I think we should wait for Senator Grafstein, since he is one of the sponsors of this measure. I would never say someone is absent, as it is against the rules and discourteous. I think we should at least consult with him.

Second, when the motion passed on what was for me a big day, I was absent, as was Senator Nolin. Being in attendance at my celebration, I could not adjourn the debate under his name; and he being busy with his bill, he could not adjourn it for himself. Thus, the motion to refer the resolution to committee was passed. I have no objection because I want to study the resolution. I want to appear as a witness because I made a speech on this issue and feel profoundly about it.

In all fairness, Senator Maheu has done her duty to refer back to the Senate the wishes of the committee. In all courtesy, we should have some dialogue with Senator Grafstein, the main sponsor of this measure. This is an old story that goes back two years. He made commitments around the world that this would be done, even before consulting with the Senate. He is now happy that the resolution has been referred to the Senate, but there is doubt in the Senate committee. Therefore, I kindly ask that Senator Maheu adjourn her motion and request more information from the sponsor of this old resolution of the OSCE that dates back almost two years.

The Hon. the Speaker: Senator Maheu, do you wish to comment?

Senator Maheu: No. I would ask honourable senators to review Senator Kinsella's comments when the resolution was referred to the Human Rights Committee. At that time, he mentioned the International Covenant on Civil and Political Rights and that Canada was found to be in violation of article 27, which sets out that states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language. I think this applies to more than one group. Several committee members have asked that we find out whether the Senate would like the committee to hear witnesses from all groups concerned.

I ask that the matter be put on hold until Senator Grafstein returns.

Hon. Joan Fraser: Honourable senators, since what I have to say will not take long, I will get it over with now. I did participate in that debate, as Senator Maheu may recall. It was my understanding that the committee was being asked to consider the text of a resolution passed by a parliamentary association. We cannot change that. The text is before us.

It is true that the debate here did range beyond the pure confines of anti-Semitism. It seemed to me at the time when I expressed my support for the motion that the primary focus of the committee's work would be anti-Semitism because that is what the text is all about.

However, Senator Maheu does chair the Standing Senate Committee on Human Rights. If it is the view of members of that committee that in order to give proper consideration to that document the committee should also look at comparable circumstances, I would not feel that the committee is betraying the mandate it has been given, as long as it does in fact consider the document and comes back to tell us what it thinks about the resolution.

• (1730)

Senator Maheu: I wanted to reconfirm with the senator that she is telling us to look at all groups. Even the resolution does not always refer to one particular group in the “whereas” sections nor in the body of the resolution.

Hon. Pierre Claude Nolin: I was not privy to the discussion that you had on that mandate, but will you be allowed to go beyond the whereas of the resolution? If yes, will you be allowed, or maybe you want to have access to other discussion around that debate on that resolution?

Senator Maheu: That is why we are asking the Senate for clarification. Should we go beyond one group or should we follow all of the paragraphs in the resolution, which touches more than one group, possibly.

Senator Nolin: That is exactly my point. It may be incomplete, because the line up of “whereas” covers many issues, but the conclusions are narrow to one group. Maybe it should expand to other groups. That is the problem. That is the way I see the problem.

On motion of Senator Rompkey, debate adjourned.

STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

MOTION REQUESTING GOVERNMENT RESPONSE—SPEAKER’S RULING

ABORIGINAL PEOPLES

MOTION TO ADOPT SIXTH REPORT OF COMMITTEE OF SECOND SESSION AND REQUEST GOVERNMENT RESPONSE—SPEAKER’S RULING

On Order No. 2:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That, pursuant to Rule 131(2), the Senate ask the Government to table a detailed and comprehensive response to the Fourth Report of the Standing Senate Committee on Official Languages, tabled in the Senate on October 1, 2003, during the Second Session of the Thirty-seventh Parliament, and adopted on October 28, 2003. —(*Speaker’s Ruling*); and

On Order No. 24:

Resuming debate on the motion of the Honourable Senator Sibbeston, seconded by the Honourable Senator Adams:

That the sixth report of the Standing Senate Committee on Aboriginal Peoples, tabled in the Senate on October 30, 2003, during the Second Session of the Thirty-seventh

Parliament, be adopted and that, pursuant to Rule 131(2), the Senate request a complete and detailed response from the Government, with the Ministers of Indian Affairs and Northern Development, Justice, Human Resources and Skills Development, Social Development, Canadian Heritage, Public Safety and Emergency Preparedness, Health, and Industry; and the Federal Interlocutor for Metis and Non-status Indians being identified as Ministers responsible for responding to the report.—(*Speaker’s Ruling*).

The Hon. the Speaker: Honourable senators, under “Other”, Item No. 2 and Item No. 24 are subject to a Speaker’s Ruling, which I am prepared to give today and I will rule on the two together. In terms of the Order Paper, I will also give a ruling on item No. 3, when it comes up.

Honourable senators, two related points of order have been raised objecting to separate motions made with respect to the application of a relatively new rule, namely, rule 131(2) of the *Rules of the Senate*. In the first instance, Senator Gauthier moved that the government provide a response to the report of the Standing Committee on Official Languages, which was tabled and adopted late in the previous session.

In the second instance, a motion stands in the name of Senator Sibbeston that a report from the Standing Senate Committee on Aboriginal Peoples, which was also tabled during the course of the second session of the Thirty-seventh Parliament, but was not adopted at the time, be adopted now and that a response from the government be requested. Senator Corbin objects to these two motions on procedural grounds.

[*Translation*]

Senator Corbin has argued that, in both cases, it is not our practice to take into consideration committee reports from a previous session. In the case of Senator Gauthier’s motion, Senator Corbin has also argued that the rules require the motion for a response be made immediately following the report’s adoption.

In the case of the motion in the name of Senator Sibbeston, Senator Corbin pointed out that, in his words “We are faced here with...an even greater sin,” since the report had not even been adopted in the previous session. Senator Corbin received support on this latter point from Senator Kinsella, who also provided input on other aspects.

[*English*]

I am indebted to Senator Gauthier, Senator Milne and Senator Robichaud, who also intervened on these points of order. As always, I appreciate the participation and assistance of all honourable senators in sorting out these matters.

The impact of prorogation on the Order Paper is well known. The sixth edition of Beauchesne, citation 235(1), page 66, says:

The effect of prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed. Every bill must therefore be renewed, as if it were introduced for the first time.

It is important to make a distinction here as to what is quashed. The citation clearly specifies “proceedings.” Proceedings on bills, reports and motions may no longer continue; all proceedings are at an end.

The citation continues:

In recent years, it has become common, by consent, to reinstate certain bills on the Order Paper of a new session at the same stage that they had reached before prorogation.

In fact, since the sixth edition of Beauchesne was published in 1989, it has become a routine practice of the House of Commons for Government Business and Private Members’ Business to be reinstated. It is now a well-established precedent in Canadian practice to bring forward matters from a previous session.

[Translation]

Returning to Beauchesne’s again, citation 890, at page 244, provides clearly that reports from previous sessions, may, if the house agrees to such a motion, be considered by the chamber in a subsequent session. Both committee reports referred to in the contested motions were properly before the Senate prior to prorogation. Clearly, then, prorogation does not represent an insurmountable obstacle to the Senate’s considering in a new session any item that remained on the Order Paper from a previous session.

[English]

This is the first time a point of order has been raised with respect to this new rule and it differs in substantial ways from the relevant Standing Order in the House of Commons. Rule 131(2) is silent on the effect of prorogation, if any, on a request for a government response. In the other place, according to the procedural authority *House of Commons Procedure and Practice*, by Marleau and Monpetit, such requests are treated in the same manner as orders for the production of papers, which, by their Standing Orders, survive prorogations and may even be reinstated following dissolutions.

Therefore, the 150 calendar days continue to be counted as though no prorogation had occurred. As another example, the practice in the other place is to refer such questions for government responses by motion adopted in committee, not by motion in their chamber, as is the case in our rules.

Rule 131(2) provides for the possibility that a motion seeking a government response may be moved “...subsequent to the adoption of a report.” No time frame is specified to define “subsequent”, so I cannot agree with Senator Corbin’s interpretation that the motion must be moved, as he said,

“...immediately after the report is adopted.” In fact, in the scenario he addresses, where there is no recommendation in the report to be adopted asking for a government response and where the motion for adoption of the report does not include a request for a government response, two days notice would be required to move a substantive motion for the referral of a request for a government response.

A suggestion was made that committees should be asked to re-table a report in a new session, to ensure that it is properly before the Senate. This would require new orders of reference, the referral of evidence from the last session, and the re-adoption of reports by committees before tabling them again in the Senate. However, I do not believe this is necessary. The Senate, as evidenced by the motions it has been passing in the past few days, routinely refers unfinished committee matters from previous sessions back to them so they can continue their work. By the same logic, the Senate has the discretion to refer outstanding matters from previous sessions for its own consideration.

• (1740)

[Translation]

What we are faced with are two motions asking the Senate to consider a separate proposal — in one case, whether or not to ask for a response to a committee report adopted in a previous session and, in the second case, to adopt a committee report from a previous session, and at the same time, to request a government response to it. To my mind, the principle behind this is sound; two of our colleagues are making specific proposals for the Senate’s consideration.

[English]

So long as the motion is clear and unambiguous, I see no procedural impediment depriving senators of the opportunity to debate and decide such motions on their respective merits. It is my decision, therefore, that debate on these two separate motions may proceed.

Order stands.

[Translation]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

MOTION TO AUTHORIZE COMMITTEE TO STUDY CERTIFICATION OF PETITIONS TABLED IN THE SENATE—MOTION IN AMENDMENT— SPEAKER’S RULING

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the Standing Committee on Rules, Procedures and the Rights of Parliament be authorized to examine, for the purposes of reporting by March 1, 2004, all Senate procedure related to the tabling of petitions in this

Chamber in Parliament assembled, that a procedural clerk, having examined the form and content, certify the petitions in accordance with established standards and that follow-up be provided for in the Rules of the Senate.

And on the motion in amendment of the Honourable Senator Corbin, seconded by the Honourable Senator Maheu, that the motion be amended by deleting all the words after the word “That” and substituting the following therefor:

“the history of the practice in both the Senate and the House of Commons relating to petitions other than petitions for private bills, as well as the customs, conventions and practices of the two Houses at Westminster, be tabled in the Senate and distributed to the honourable senators before being referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.”—(*Speaker’s Ruling*).

The Hon. the Speaker: Honourable senators, on Monday, February 16, Senator Gauthier raised a point of order to object to the amendment that Senator Corbin had proposed to a motion that Senator Gauthier had moved several days earlier. Senator Gauthier’s motion seeks to authorize the Committee on Rules, Procedures and the Rights of Parliament to report on Senate practices with respect to the consideration of petitions. The amendment of Senator Corbin substituted the original proposition with another requiring that information about the history of the practice of petitions in the Senate and the House of Commons and at Westminster be tabled in the Senate before being referred to the Rules Committee.

[*English*]

According to Senator Gauthier this amendment, if adopted, would supersede his original proposition altogether. He based his analysis on several parliamentary authorities including Beauchesne, which he cited specifically. He claimed that such an amendment was procedurally irregular, unacceptable and out of order. Whatever the merits of Senator Corbin’s proposition, Senator Gauthier maintained that it should be introduced as a separate motion, after notice, not as an amendment.

By way of reply, Senator Corbin indicated that the sole purpose of his amendment was to ensure that any changes made to current practice and to the Rules of the Senate be based on an understanding of their historical origins, application and development. As he explained it, “People rarely take the time to carry out a historical overview in order to try to understand why the rules are worded in such a way, and why they are sometimes so strictly applied.” As to being a dilatory motion, Senator Corbin denied any motive or intent to thwart the objectives of Senator Gauthier’s motion.

[*Translation*]

Following these comments, I indicated that I would consider the point of order and return to the Senate with a decision as soon as I could. Having reviewed the Debates and both the motion and the proposed amendment, I am now prepared to give my ruling.

[*English*]

Standard parliamentary authorities, such as Marleau and Montpetit at page 454, state that a superseding motion is “proposed with the intention of putting aside further discussion of whatever question is before the House.” Superseding motions are divided into two classes: One is the Previous Question; the other is a dilatory motion. Dilatory motions include motions to adjourn the house, to adjourn debate or to proceed to another order of business. The amendment of Senator Corbin is none of these.

Instead, Senator Corbin’s amendment addresses the substance of Senator Gauthier’s motion and proposes to alter it significantly. If adopted, Senator Corbin’s amendment would displace entirely the proposition of Senator Gauthier. By practice, amendments can be quite broad and encompassing in their effect. Beauchesne’s citation 567 at page 175 explains that:

The object of an amendment may be either to modify a question in such a way as to increase its acceptability or to present to the House a different proposition as an alternative to the original question.

To accomplish this, motions may be amended by leaving out certain words, leaving out certain words in order to insert other words, or inserting or adding other words. Amendments may even substitute a proposition with an opposite conclusion.

This being said, I think it is useful to point out that the amendment of Senator Corbin may not be drafted to achieve what he wanted. I say this because, in reading the text carefully, I note that there is no appropriate responsibility identified for preparing the history of the petitions, nor is there a date for the production of this history. Equally significant, while the amendment insists that this history be prepared and distributed to members of the Senate before going to the Rules Committee, it does not actually refer the matter to that committee. The lack of clarity in this amendment makes it somewhat problematic in its intent.

It may be that further refinement of his amendment would assist us all in understanding exactly what should happen and when. I will remind senators of our rule 30 which allows that a motion may be modified with leave of the Senate.

In conclusion, I can find no reason for this amendment to be ruled out of order on procedural grounds. It is my ruling that debate may continue on the amendment.

Hon. Eymard G. Corbin: Your honour, I rose on a point of order. I have spoken to this item, but you seem to invite me to elaborate. Therefore, I will give myself a moment to think about it and propose the adjournment of the debate.

The Hon. the Speaker: I think we can stand the item, honourable senators.

Hon. Senators: Agreed.

Order stands.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

MOTION TO AUTHORIZE COMMITTEE TO STUDY PRIVATE MEMBERS' BUSINESS—DEBATE ADJOURNED

Hon. Sharon Carstairs, pursuant to notice of February 12, 2004, moved:

That the Standing Committee on Rules, Procedures and the Rights of Parliament study the manner in which Private Members Business, including Bills and Motions, are dealt with in this Chamber and that the Committee report back no later than November 30, 2004.

She said: Honourable senators, in my view, it is time to study the manner in which private members business, motions and bills are treated in this house.

I have two principal concerns about which I would like the committee to engage in a study. The first is with respect to the way in which the House of Commons, in effect, brings back legislation, but we have no similar procedure. In my view, this is punitive to members of our chamber who have put time and effort into their bills.

• (1750)

Why, for example, should bills like Bill C-250, 212, 249, 260 and 300, all of which have merit, be automatically revived, but Senate bills like Bill S-2, 4, 7, 3 and 12 are not? Are our bills of less merit? Are they less worthy? I think not; indeed, to the contrary. It is my experience that our bills are fully as substantive and as of value as those of the other place.

The second concern I have has to do with the means by which our bills draw the attention of members of this chamber. Let me begin with perhaps what we could view as a worst-case scenario. An honourable senator moves and speaks to a private member's bill. Another senator takes the adjournment. The bill then is stood 14 days in a row. In the normal schedule of chamber sittings, that is five weeks. We have five weeks with no debate. On the fifteenth day, the senator who took the original adjournment rises in his or her place, makes a few comments, indicates that he or she really wants to continue the discussion at a future date and so again adjourns the debate. That means we then could have another 14 days without any discussion, and so forth and so on.

Private member's business is not government business, honourable senators, so there is no potential for closure, which I think is a good idea. However, this practice also puts our leadership, the deputy leaders on both sides of this place, in an almost untenable situation. The senator who has not used their time to debate is not in the chamber, so either Senator Kinsella or Senator Rompkey, depending on whose senator he or she might be, feels the necessity to stand the item. It is not really their responsibility, but the senator is not in the chamber. The deputy

leaders must accept that responsibility because there is no one else to accept the responsibility for them.

Honourable senators, there must be a better way. If we look at the effort that senators often put in to prepare a private member's bill or a motion, I think we would, with common justice, recognize that it deserves to have some attention paid to it.

In the other place, for example, a bill is debated for up to an hour and falls to the bottom of the Order Paper if not brought to a vote. It reappears for another hour of debate and/or vote. If it comes to the Order Paper a third time, the vote must be taken. A similar process occurs in the Manitoba legislature, the provincial assembly with which I am most familiar.

Honourable senators, I may not like a bill introduced by a colleague, and I have the right to state my reasons or objections on the record. However, my colleague has the right to expect that his or her work has been taken seriously, and in my view that ultimately requires a vote. Not only is this courteous, but I suggest it is the democratic thing to do.

I have no specific bias to any particular system used in other chambers or indeed in the other place. I think simply that the Rules Committee should study what is being done in the House of Commons, other provincial legislatures and other Parliaments throughout the world.

Honourable senators, it is time to find a better way. Our system, in my view, is simply not working.

On motion of Senator Poy, debate adjourned.

[Translation]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO CONTINUE STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

Hon. Maria Chaput, pursuant to notice of February 17, 2004, moved:

That the Senate Standing Committee on Official Languages be authorized to study and report from time to time upon the operation of the Official Languages Act, and of regulations and directives made thereunder, within those institutions subject to the Act, as well as upon the reports of the Commissioner of Official Languages, the President of the Treasury Board and the Minister of Canadian Heritage;

That the Committee table its final report no later than June 30, 2004; and

That the papers and evidence received and taken on the subject and the work accomplished during the Second Session of the Thirty-seventh Parliament be referred to the committee.

Motion agreed to.

[English]

HUMAN RIGHTS

COMMITTEE AUTHORIZED TO ENGAGE SERVICES

Hon. Shirley Maheu, pursuant to notice of February 17, 2004, moved:

That the Standing Senate Committee on Human Rights have power to engage the services of such counsel and technical, clerical, and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject matters of bills and estimates as are referred to it.

Motion agreed to.

COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE

Hon. Shirley Maheu, pursuant to notice of February 17, 2004, moved:

That the Standing Senate Committee on Human Rights be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

Motion agreed to.

COMMITTEE AUTHORIZED TO CONTINUE STUDY ON LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP

Hon. Shirley Maheu, pursuant to notice of February 17, 2004, moved:

That the Standing Senate Committee on Human Rights be authorized to examine and report upon key legal issues affecting the subject of on-reserve matrimonial real property

on the breakdown of a marriage or common law relationship and the policy context in which they are situated.

In particular, the Committee shall be authorized to examine:

- The interplay between provincial and federal laws in addressing the division of matrimonial property (both personal and real) on-reserve and, in particular, enforcement of court decisions;
- The practice of land allotment on-reserve, in particular with respect to custom land allotment;
- In a case of marriage or common-law relationships, the status of spouses and how real property is divided on the breakdown of the relationship; and
- possible solutions that would balance individual and community interests.

That the papers and evidence received and taken on the subject and the work accomplished by the Standing Senate Committee on Human Rights during the Second Session of the Thirty-seventh Parliament be referred to the Committee; and

That the Committee submit its final report no later than June 25, 2004, and that the Committee retain all powers necessary to publicize the findings of the Committee contained in the final report until July 30, 2004.

Motion agreed to.

The Senate adjourned until tomorrow at 9 a.m.

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