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Wednesday, February 25, 2004

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, February 25, 2004

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

Prayers.

SENATORS' STATEMENTS

ADVANCEMENT OF VISIBLE MINORITIES IN THE PUBLIC SERVICE

Hon. Donald H. Oliver: Honourable senators, I rise today to draw your attention to a growing crisis in Canada's public service. I refer to systemic barriers to the advancement of Canadians of colour. I refer to systemic racism in the Canadian public service that has brought progress and advancement of visible minorities in the public service to a virtual standstill. There is no upward mobility and, more important, there is no inclination on the part of the government, the Governor-in-Council or the Prime Minister to do anything about it.

The Speech from the Throne is silent about visible minorities. The speech the Prime Minister gave in the House of Commons following the pronouncement of the Speech from the Throne in the Senate is silent as to visible minorities. The major speech given in this chamber last week by the Leader of the Government in the Senate, the Honourable Jack Austin, is silent as to visible minorities. The freeze imposed by the Martin government on promotions and advancements has ended any hope of advancement of visible minorities in the public service.

So what is the problem, you may ask?

As honourable senators will know, in the 1980s the Government of Canada determined that there were four target groups in need of special measures in order that they could achieve equality. These four groups are: Aboriginals, women, the disabled, and visible minorities.

The new Martin government has brought forth many magnificent new initiatives in support of the first three, but has done nothing in relation to the fourth group — namely, visible minorities — which, sadly, still remain at the bottom of the heap. I have written eight times to the Clerk of the Privy Council, but not one of those letters has been acknowledged, let alone responded to.

My last note to the Clerk of the Privy Council requested, first, a reference to visible minorities in the Speech from the Throne and, second, the development of a special secretariat in the Privy Council Office for visible minorities, like that created by the Martin regime for the disabled and Aboriginals. No such luck.

Visible minorities are conspicuous by their absence in executive ranks of the public service, representing a mere 3.8 per cent.

Honourable senators, systemic racism in the Public Service of Canada has reached an all-time high. Morale among visible minorities is at an all-time low. There is little, if any, hope of advancement or of their being treated equally with others.

Honourable senators, now is the time for the government to act. I shall shortly be setting down an inquiry, calling upon the government to take action immediately with new initiatives designed to afford Canada's fourth target group — namely, visible minorities — the same rights, privileges and protections as all other Canadians. Please join me in efforts to rectify this pressing problem.

SPECIAL OLYMPICS CANADA WINTER GAMES

Hon. Catherine S. Callbeck: Honourable senators, today I want to pay tribute to an exceptional group of Canadians, individuals who have demonstrated that each of us has the potential to rise to new challenges. The people I refer to are the members of the teams from across the country that participated in last week's Special Olympics Canada Winter Games, in Charlottetown, Prince Edward Island.

The Special Olympics was first held in Charlottetown in 1968. Its founder, Dr. Frank Hayden, believed that people with a mental handicap could become more physically fit and acquire the skills they needed to participate in organized sports. Since then, the movement has grown to more than 28,000 athletes registered in Special Olympics sports programs across Canada.

Today, Special Olympics demonstrate the courage and commitment of athletes, the dedication of coaches and volunteers, fair and positive competition, and commitment to creating satisfying and rewarding experiences for everyone involved. Through Special Olympics, people with intellectual disabilities can live happier, healthier, and more confident and productive lives.

At the same time, the Special Olympics program helps to create greater acceptance for people with intellectual disabilities among members of society. Through this program, society can see the potential of people with disabilities, not just the limitations.

Last week's Winter Olympics in Charlottetown — the first ever held in Prince Edward Island — will be especially remembered. A severe winter storm hit the province, leading to a declaration of a state of emergency. However, all the competitions were completed and the Special Olympians took it all in their stride by demonstrating their resiliency, and the true spirit of Olympic sportsmanship was achieved.

Honourable senators, I ask you to join with me in congratulating the organizers, the participants, the coaches, the friends and family who helped make the 2004 Special Olympics Canada Winter Games such a resounding success.

HEALTH CARE SYSTEM

Hon. Gerry St. Germain: Honourable senators, I want to read a few excerpts from the Canadian Medical Association's press release of today. I believe it clearly paints a picture of the damage done to our health care system by the present Liberal government.

Honourable senators, our health care providers have been doing yeoman's work with a system that has been underfunded. The government's approach to funding health care mirrors its 35-year policy of underfunding National Defence — and honourable senators know the damage that has been created by that policy.

Honourable senators, the CMA had the following to say about the state of our health system. Dr. Sunil Patel, president of the CMA, said the following:

> "Canadians are telling us that waiting for health care is making them sick and tired." As a physician, I, too am tired — tired of constantly defending the system to patients asking me why — "Why must I wait so long for my referral, my tests or my treatment?"

Most Canadians have indicated that they feel waiting times are only getting worse.

Dr. Patel continues:

> There is no doubt among Canadians that the biggest obstacle to access is the shortage of health care providers. That may not be news, but it is well past time that someone did something about it — Canadians are suffering for it.

The CMA is calling for the creation of a five-year, $1-billion health human resources reinvestment fund. Such a fund, coupled with the creation of a health institute for human resources, will allow for national, long-term sustainable health human resource planning to put more hands on deck, not just physicians, but also others such as nurses and technicians. These initiatives will also help address critical needs such as the current lack of medical residency positions.

• (1340)

To address health infrastructure concerns, such as improving hospital facilities and the ability to upgrade medical devices, the CMA is also calling on the federal government to stop clawing back health care funding by fully rebating or reducing to zero the GST paid by the health care system. This initiative will provide at least some relief from the ongoing cost pressures and is in keeping with the spirit of recent federal announcements regarding the GST and municipalities.

Dr. Patel concluded by stating:

> Despite royal commissions, Senate studies and first ministers accords, Canadians are not seeing any improvement in access to health care. In fact most feel waiting times are only getting worse.
>
> Timely access to quality care must become our credo if we are to address this crisis of confidence in accessing medicare and preserve the health care system of which we are all so proud.

[*Translation*]

QUEBEC FILM INDUSTRY

Hon. Lucie Pépin: Honourable senators, it is my pleasure to congratulate the members of the Quebec film industry who were honoured at the Jutra Awards on Sunday.

The Barbarian Invasions confirmed its excellent reputation, receiving four awards, including the Jutra for best film. Its director, Denys Arcand, also received the awards for best screenplay and best direction. This film won the same awards at the Nuit des Césars, which honours French cinema.

The other big attraction of the evening was *Seducing Doctor Lewis* by Jean-François Pouliot, which swept up seven awards. In addition to the Billet d'or and the awards for best supporting actors, this film was also honoured for its art direction and editing.

Serge Thériault received the Jutra for best actor for his role in *Gaz Bar Blues*, a film which also received an award for its music.

This sixth annual Jutra Awards gala topped off a particularly splendid year for Quebec cinema. In fact, 2003 was an exceptional year for the film world in Quebec.

I would like to express my sincere thanks to all the men and women who have contributed to the success of the films. To the actors, directors, distributors, screenwriters, producers, technicians and composers, I would like to say how much we have appreciated your work. You have created magnificent works of art that have made us dream and stirred our emotions, and in general have pushed us to take a deeper look at our world and all who live in it.

In an environment dominated by the Hollywood machine, our talented filmmakers have succeeded in finding an appreciative audience for films of another kind, not just those made for commercial motives.

This kind of cinema mirrors the distinctiveness of our Quebec culture and also displays Canadian culture in all its diversity. These fine productions will carry our values and our vision of the world around the planet.

I could not close without wishing good luck to Denys Arcand and Denise Robert whose film, *The Barbarian Invasions*, is a nominee at this weekend's Oscars. To the teams who created *Seducing Doctor Lewis* and *Gaz Bar Blues*, and all the filmmakers of Quebec, I wish continued success.

[*English*]

HEALTH CARE SYSTEM

Hon. Sharon Carstairs: Honourable senators, I found this afternoon's statement by the Honourable Senator St. Germain interesting because I read the same press release and frankly had quite a different reaction. The federal government has been consistently adding to provincial health budgets — some $34 billion in the health accord of 2003. Of that $34 billion, $16.5 billion was put aside to change the health care system, making it less dependent upon acute care hospitals and geared more to delivering home care services. Three particular issues were to be identified in this basket of services: post-surgical care, mental care in the community, and, close to my heart, palliative and end-of-life care.

Regrettably, the provinces and the federal government have yet to come to an agreement on how that $16.5 billion should be spent. In my view, we do not have a lack of funding but rather a lack of willingness on the part of the players who deliver health care to come to a rational conclusion as to how money should be spent.

As regards the need to train more doctors in our country, that issue is well within the prerogative of the provinces because they fund the 16 medical schools in this country. They made the decision to decrease the number of training physicians, and they will have to decide to increase that number.

Senator St. Germain: Perhaps the government should quit trying to bully the provinces and work with them.

ROUTINE PROCEEDINGS

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY CHARITABLE GIVING

Hon. Richard H. Kroft: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on issues dealing with charitable giving in Canada. In particular, the Committee shall be authorized to examine:
>
> - The needs and opportunities of Canadians in relation to various aspects of Canadian life (such as health care, education, social and cultural programs and institutions, senior care, heritage preservation, scientific research and more) and the ability of Canadians to assist in these areas through charitable giving;
>
> - Current federal policy measures on charitable giving;
>
> - New or enhanced federal policy measures, with an emphasis on tax policy, which may make charitable giving more affordable for Canadians at all income levels;
>
> - The impact of current and proposed federal policy measures on charitable giving at the local, regional and national levels and across charities;
>
> - The impact of current and proposed federal policy measures on the federal treasuries;
>
> - any other related issues; and
>
> That the Committee submit its final report no later than December 31, 2004.

STATE OF CANCER

NOTICE OF INQUIRY

Hon. Sharon Carstairs: Honourable senators, I give notice that on March 2, 2004, I will report on the state of cancer in Canada — its care, treatment and expectations for the future.

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

Hon. Shirley Maheu: Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by another 48 people asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

> That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;
>
> That section 16 of the *Constitution Act, 1867* designates the city of Ottawa as the seat of government of Canada;
>
> That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.
>
> Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the *Constitution Act*, from 1867 to 1982.

• (1350)

QUESTION PERIOD

HEALTH

ACCESS TO CARE

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. Indeed, my question has been partially answered by Senator St. Germain's and Senator Carstairs' statements. I must say to Senator Carstairs, I enjoyed her during her superb job as Leader of the Government in the Senate. We addressed this subject on a few occasions.

Senator Prud'homme: Hear, hear!

Senator Keon: However, this morning, I attended and participated in the press conference of the Canadian Medical Association, and its mission was a national health access campaign.

Its surveys show that 70 per cent of Canadians feel that they are not gaining adequate access to health care. Of that 70 per cent, 50 per cent feel that their health is being damaged because of lack of access to health care. They are advocating $1 billion over five years to provide adequate manpower to deal with this access. Honourable senators will have noticed that yesterday the provinces just wanted money. We are not solving anything with just more money.

My question to the Leader of the Government is this: Does the federal government have any plan to get some movement here to move this agenda and get more doctors and nurses into the system?

Hon. Jack Austin (Leader of the Government): Honourable senators, as Senator Keon knows, the federal government, along with most of the provinces, has underway the establishment of a Canada health council. The purpose of that council is to provide the kind of coordination and direction that Senator Keon is asking for in this particular instance.

The subject of health coordination is also a leading agenda item for the forthcoming federal-provincial meeting on health, which is currently scheduled for July. That will be a first ministers meeting to advance the common agenda on health care in Canada.

May I say that I agree with Senator Keon that there needs to be more coordination and common agreement on where the priorities lie so that money will be directed to obtain real value in health care. I am sure that the government will respond to that kind of request.

Senator Keon: Honourable senators, I heard again this morning that there are some 40,000 foreign medical graduates living in Canada, many of whom could be properly trained to provide health care. The problem, again, is bureaucracy at its worst. This includes many people, including the medical profession itself, but, again, there is no movement.

Recently, the Ontario College of Physicians and Surgeons expressed its willingness to try to solve this problem, but the College claims it does not have the residency positions to solve it nor the money to provide the residency positions to solve it.

I ask the leader again — maybe I am pleading with him — could there be some national leadership to break the logjam and get some action in this area?

Senator Austin: Honourable senators, there has been much discussion concerning the competence of foreign-trained medical personnel. As the honourable senator knows, part of the barrier is that the medical profession is a self-governing entity in each province. Part of the problem is that other parts of the medical treatment fraternity have similar rules, all established at the provincial level. As the honourable senator indicated, there are institutional constraints built into that system.

Again, maybe I am putting too much faith in the new Canada health council and the agenda of the first ministers meeting, but making the talents and training that are present in Canada available to Canadians and to the service of Canadians ought to be our objective. I will certainly advance the honourable senator's representation to the Minister of Health.

NATIONAL DEFENCE

FUNDING SHORTFALL—POSSIBLE CLOSURE OF BASES

Hon. J. Michael Forrestall: Honourable senators, it has been reported in the *National Post* and in other news media that Canada's army, navy and air force are faced with a funding shortfall of up to $500 million. The military, as a result, is recommending closing some of the largest bases in the country. Reports indicate that in the fiscal year beginning April 1, just around the corner, the air force expects to be $150 million short of funds needed to fulfil its current commitments. Unless additional government funding is awarded, the air force has suggested closing bases at Goose Bay.

Senator Rompkey: Never!

Senator Forrestall: I am pleased to hear the honourable senator say that.

Senator Stratton: How about Winnipeg?

Senator Rompkey: Over my dead body.

Senator Forrestall: Bagotville.

Senator St. Germain: When is the funeral?

Senator Forrestall: North Bay and Winnipeg — any takers?

Senator Stratton: He said "No."

Senator Forrestall: Further to this, honourable senators, the air force report indicates that unless its fleet of aging 130 Hercules tactical transport planes is replaced or modernized, the main transport base at Trenton could be closed well within 10 years.

Can the Leader of the Government in the Senate confirm those plans and plans for possible closures in Goose Bay, Bagotville, North Bay, Winnipeg and possibly Trenton and, as well, the very real difficulty the army is experiencing with CFB Gagetown?

Hon. Jack Austin (Leader of the Government): Honourable senators, as is often the case in the debate on military expenditures, stories are started in the form of advocacy by various people. Oft times, those stories are helpful in clarifying the situation as it is.

The current situation is that Minister of Defence David Pratt denies that he is looking at closing any bases. In fact, he says he is thinking of opening one additional base. I am delighted to have the question and the ability to clarify the situation.

Senator Stratton: No money.

Senator Tkachuk: With no cash.

Senator Forrestall: Before I go any further, I must ask the distinguished Leader of the Government if he would be so kind as to have that response forwarded to me as well as a verbal assurance here in writing.

Honourable senators, when you cannot set up a sponsorship program, you have to find some way of raising some money. I think this is somewhat of a first. Of course, Minister Pratt has plans for a brand new base. It is called DNDHQ. That is the abbreviation for it. The consultations have now gone beyond Public Works and Treasury Board, both of which departments, as I am told and understand, have signed off in a positive way with respect to this decision. The decision, of course, is to move current National Defence Headquarters from its present location to Nepean. We know who represents that riding in the other place. That is the new base.

• (1400)

I would like written assurance that all these other base closures, notwithstanding the position put forward by the minister, which I do not accept because there is just too much evidence to the contrary, are not to facilitate the cost of moving and re-establishing DNDHQ in the heart of the minister's riding. I ask for that assurance in the full awareness of the real difficulty we got into years ago when we were forced into the present location. I have no objection to headquarters being moved to a safer location, but not at the expense of five other Canadian bases. What are we talking about?

Senator Austin: Honourable senators, with the greatest respect, if a statement that I make on behalf of the government in the Senate is not acceptable to Senator Forrestall, what is the purpose of my answering his question?

Senator Forrestall: Sir, you can make your choice. If you do not answer my questions, if you think I place too much reliance on your answers, then I should disillusion you of that. I do not. You tell me what is in your little book and what you think I want to hear. My purpose is to obtain an assurance in written form so that people will have something to read and refer to, other than your off-hand comments to my questions. The flippancy that accompanied the last answer is not acceptable to me, either, sir.

Senator Austin: You have my answer in written form in the context of the *Debates of the Senate*. That is about as written as it should be and should need to be. I do not intend to be flippant, but I feel quite put off when you make a categorical statement that nothing I say has any impact on you. You are wasting your time asking questions if you are not interested in the answers or giving some credibility to them.

TREASURY BOARD

PROGRAMS TO PROMOTE VISIBLE MINORITIES

Hon. Donald H. Oliver: Honourable senators, I have a question for the Leader of the Government in the Senate. Fully 73 per cent of new immigrants to Canada today are visible minorities. Visible minority incomes trail those of average Canadians by 15 per cent, once they get a job. Unrecognized credentials, such as the issue raised by Senator Keon, and learning costs cost the Canadian economy between $2 billion and $3 billion per year. Visible minorities are conspicuous by their absence in the executive ranks of the federal public service, comprising only 3.8 per cent of the total. The public service does not reflect the face of Canada. Will the honourable Leader of the Government in the Senate explain why his government — this government — has not introduced any programs for this fourth target group in an effort to assist and promote the advancement of visible minorities to the executive ranks?

Hon. Jack Austin (Leader of the Government): Honourable senators, I agree with Senator Oliver's goal, which I believe is a desirable one in Canadian public policy. I am not able to answer today as to the current government policy because I do not have that information at hand, but I will answer the question as soon as I do get that information.

Senator Oliver: Assuming that the minister does make that inquiry, there is a program that used to be called the One in Five, arising from a study entitled "Embracing Change." As a result of that study, it was determined that in order to equalize opportunity, one out of five new employees should be a visible minority. I understand that the funding for that initiative has now dried up. Could the leader determine whether that funding will be reinstated and, if so, to what levels?

Senator Austin: I will make inquiries.

THE SENATE

PROGRAM TO PROMOTE VISIBLE MINORITIES

Hon. Consiglio Di Nino: Honourable senators, on at least two or three occasions, I have raised the issue in the Senate about the Senate's own performance in dealing with this issue.

Mr. Minister, I do not know if you are the appropriate person to ask, but could we have a report to see how the Senate has advanced this issue, both at the executive and middle management levels? I do not think we have done a good job in our own house, so to speak.

Hon. Jack Austin (Leader of the Government): Honourable senators, I will draw the question to the attention of the Chair of the Standing Committee on Internal Economy, Budgets and Administration, which has responsibility for this aspect of the management of the Senate's business.

Senator Di Nino: Could the minister undertake to give us a response to that question, please?

Senator Austin: I will certainly request it from Senator Bacon, Chair of the Internal Economy Committee, but she has a very independent mind. I am not sure how she will deal with my request.

FINANCE

RENEWAL OF EQUALIZATION PROGRAM— REQUEST FOR TABLING OF DOCUMENT

Hon. Lowell Murray: Honourable senators, it appears that last Friday the Minister of Finance tabled, at a meeting with his provincial counterparts, a document outlining the government's plans with regard to the renewal of the equalization program next year. I think it was intended as a confidential document. However, shortly after it was tabled, the provincial ministers were before the television cameras denouncing it, followed soon after by the federal minister defending it. This question will provide a lot of background noise for Bill C-18, which will probably come to us shortly, the sole purpose of which is to extend the present equalization program for a year. I think it is important that we know what it is they are talking about. I would therefore ask the Leader of the Government in the Senate if he would persuade Mr. Goodale to table that document in Parliament, or to release it in some other fashion, so that I do not have to wait for a brown envelope to materialize over the transom.

Hon. Jack Austin (Leader of the Government): Honourable senators, I will give the Minister of Finance a heads-up with regard to the inquiry of Senator Murray.

HERITAGE

NATIONAL ARCHIVES— STATE OF STORAGE FACILITIES

Hon. Pierre Claude Nolin: Honourable senators, yesterday afternoon we heard Senator Léger talk about the poor state of the public archives. Last Sunday night, Radio Canada exposed, to at least the francophone Canadian public, the poor state of those very important Canadian archives. One example had to do with original documents from Samuel de Champlain, the founder of Quebec City, dating back to 1608. If this were the United States, I am sure that such originals would be framed in a showcase and that a building would have been built to house and display them to the public. What is the intent of this government, not a year from now, but now? Given what I saw on television last Sunday, we have a matter of weeks to protect the quality of those public archives. What does the government intend to do about that situation?

Hon. Jack Austin (Leader of the Government): Honourable senators, the government has certainly seen and studied the Auditor General's report on heritage sites and on the condition of the archives. The Minister of Canadian Heritage has underway a rapid response inquiry with her department. I hope action can be taken relatively soon to deal with the most immediate problems, but the systemic problem is still there. It is costly and will need to be addressed as well in the near future.

• (1410)

Senator Nolin: Honourable senators, I hope that cost is not the principal concern. Everything costs, but we are talking about national archives — national documents that go to the heart of the history of our country. I hope money is not the principal factor for the delay in getting involved in the proper protection of those unique documents.

Senator Austin: Honourable senators, I could not agree more with respect to the importance of protecting our documentary heritage. They are treasures. If there are gaps — and there are — in the way we are dealing with those documents, in preserving the history of Canada, then I certainly will be on the side of the Minister of Heritage in finding the funds.

TREASURY BOARD

AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM— SUSPENSION OF HEADS OF CROWN CORPORATIONS

Hon. Gerald J. Comeau: Honourable senators, the Prime Minister announced yesterday the suspension of three presidents of Crown corporations, namely, André Ouellet, President and CEO of Canada Post, Marc LeFrançois, President of VIA Rail, and Michel Vennat, President of the Business Development Bank of Canada. Both Mr. Vennat and Mr. LeFrançois were suspended without pay, while Mr. Ouellet was suspended with pay, pending the outcome of a wider audit.

Why did the Prime Minister come to the conclusion that Mr. Ouellet should get this paid holiday?

Hon. Jack Austin (Leader of the Government): Honourable senators, I would not describe it as a paid holiday. Throughout the circumstances of the sponsorship and advertising events, Mr. Ouellet was the CEO of Canada Post. The Auditor General did not comment that Mr. Ouellet had a direct role whatsoever in any of the transactions that took place between the communications branch in Public Works and Canada Post. Nonetheless, he is responsible for the response to the administrative errors that took place while he was CEO. Therefore, it was the decision of the government that the questions concern the way in which the measures that involved the sponsorship program and Canada Post were implemented, who implemented them, when Mr. Ouellet knew about those measures, and what action he took to deal with them.

However, there is no implication at this stage that Mr. Ouellet had any directing role or even knowledge of those events. The government has asked Mr. Ouellet to provide full documentation to answer this set of questions. As the President of the Treasury Board has said, if the government is satisfied with those answers, Mr. Ouellet will be back at his desk.

Senator Comeau: Honourable senators, I have a supplementary question.

Mr. Vennat does give the indication, from what I read from media reports, that he has lost the confidence of the Prime Minister. However, as of last week, the board of directors of the Business Development Bank of Canada passed a vote of confidence in Mr. Vennat. That leaves us in a quandary, because the members of the board are all government appointees. Should the Prime Minister not consider at this point the resignation of the full board of the Business Development Bank of Canada because of its confidence in Mr. Vennat?

Senator Austin: Honourable senators, I saw a report in a newspaper that the board of the Business Development Bank of Canada had passed a motion of confidence in Mr. Vennat. However, I have not been able to confirm that. What I do know is that the board of the Business Development Bank of Canada decided not to appeal the decision in the *Beaudoin* case and has taken no action with respect to Mr. Vennat. That is the only information I have at the moment.

PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM—AVAILABILITY OF FUNDS

Hon. Gerry St. Germain: Honourable senators, my question is supplementary to the questions of Senator Comeau.

Honourable senators, the following is a quote from Jamie Kelley:

> They told me of a secret slush fund where they could access money for constituency programs. There was no application form, no process other than to write a letter to Mr. Pierre Tremblay at Public Works.

Yesterday, the Leader of the Government in the Senate said that every MP had access to the sponsorship fund. I polled the MPs in our caucus this morning. I deliberately asked them how many of them knew about the process and the fund. To be fair, two or three of them said to me that they had been advised that funds had been placed in their ridings, in organizations that were bona fide, as far as they were concerned. However, the MPs were never given any information that these funds were available to them. It seemed from their perspective that the fund was strictly for Liberal members of Parliament. Minister Anderson has complained that 80 per cent of the funding went to one particular province.

My question to the government leader is this: He says he is put off. How does he think we feel, as opposition members of Parliament? The government leader has done constituency work, as have I, and he has done credible work. I would never take that away from him. However, when we were in power, I worked with people such as Brian Tobin, among others, and I still have a relationship with him because I was prepared, if we had a program, to have everybody share in it — not just one particular side.

In the minister's case, he possibly did not know about it, but the leader had to know about it. What will the Liberal government do about this outrageous behaviour?

Hon. Jack Austin (Leader of the Government): Honourable Senators, I always enjoy the vigour with which Senator St. Germain asks his questions.

I do want to make it clear that programs of the Government of Canada should be available to every parliamentarian, without exception, and not made available on the basis of partisan favour. That is a standard of public ethics and credibility that the government must maintain.

In the case of the sponsorship program, the government has initiated processes to examine what took place. Indeed, the nature and character of that program will be very well known by the time the judicial inquiry is concluded and, I would hope, far sooner, through the work of the Public Accounts Committee in the other place.

As Honourable Senator St. Germain knows, former Minister Gagliano will be a witness before the Public Accounts Committee in the other place tomorrow. I am sure that the examination of the events will be conducted in a very thorough way by members of that committee.

THE SENATE

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

Hon. Douglas Roche: Honourable senators, the Leader of the Government in the Senate will be aware that about 30 Liberal members of Parliament voted in the House of Commons yesterday against Canada participating in the U.S. missile defence system. At the very least, that reveals the depth of feeling on this extremely controversial subject, which is of critical importance to Canada's role in building global security.

The leader will know that I have raised the issue over several days about a government-sponsored debate in the Senate on this subject. I have studied the leader's answers and, as such, am at a loss as to what he means when he says that he is not certain what would be added by a debate at this time in the Senate.

• (1420)

Will the Leader of the Government in the Senate re-examine this issue and allow the Senate to speak, to have the voices of senators raised as a contribution to the alleviation of the concern of so many people as reflected in the debate in the House of Commons? The voices of the Senate should now be heard in the country on this very important subject.

Hon. Jack Austin (Leader of the Government): Honourable senators, first, I want to claim a victory for the Prime Minister's democratic reform program as witnessed by the vote in the other place during the missile defence debate. It is a great credit to the strengthening of the role of parliamentarians, in particular members of Parliament in the other chamber, that government supporters were told to vote according to their convictions. It is interesting to note that the opposition parties voted en bloc. Therefore, they are clearly not yet ready to free their members to be real parliamentarians who can act on their convictions.

With respect to the specific question that Senator Roche asks, what I am saying to the honourable senator and this chamber is that the debate, while it would be valuable, is not one the government thinks should be sponsored by the government at this time. There is now a great deal of material in the public domain. I think a reasonable time should pass to allow public opinion to develop.

There is a time, however, Senator Roche, when this would be an appropriate subject for a government inquiry.

DELAYED ANSWER TO ORAL QUESTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to present a delayed answer to an oral question posed by the Honourable Senator Gauthier on February 16, 2004, concerning the Federal Court ruling on a case brought by mayors of the Acadian Peninsula and appealed by government.

JUSTICE

FEDERAL COURT RULING ON CASE BROUGHT BY MAYORS OF ACADIAN PENINSULA— APPEAL BY GOVERNMENT

(Response to question raised by Hon. Jean-Robert Gauthier on February 16, 2004)

The Government continues to assume its responsibility for the implementation of Part VII of the Official Languages Act.

This part of the Act sets out the Government's solemn commitment to advancing English and French in Canadian society, including the development of minority communities. Although this is a policy commitment, this part of the Act is binding on all federal institutions.

The Official Languages Accountability and Coordination Framework specifies the enforcement procedures for this commitment as well as the responsibilities of each federal institution in that regard.

Through the reports tabled by the Minister of Canadian Heritage, who is mandated to coordinate implementation of Part VII, federal institutions report to Parliament for measures they have taken to ensure the fulfilment of this commitment.

Part VII of the Official Languages Act is declaratory, in that it does not expressly include any substantive legal right or obligation; this Part of the Act asserts a commitment by the Government of Canada. As a result, Part VII is not justiciable, in that it does not provide for a legal remedy in cases of alleged breaches. The legal scope of such a commitment has been the object of legal debates over a number of years.

As you know, on September 8th, the Federal Court issued a judgment in the case involving the Forum des maires de la péninsule acadienne. Justice Blais dealt with Part VII of the Official Languages Act, among other factors.

The Government believes that the appeal before the Federal Court of Appeal will help to clarify the legal scope of Part VII.

This legal debate in no way diminishes the Government of Canada's commitment with respect to the development of official language minority communities in Canada and to foster the full recognition and use of both English and French in Canadian society. In fact, the new Accountability framework quite clearly states the responsibilities of Ministers and public servants with respect to Part VII of the Act and reinforces mechanisms that were already in place to respect the Government of Canada's commitment to language duality.

As the matter is now before the Federal Court of Appeal, it would not be proper to comment in further detail.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, under Government Business, could I ask that the government bills be called in the following order, please? The first will be Bill C-4, followed by Bills C-20, C-17, C-14 and C-7. Out of deference to Senator Forrestall, I will quit at that point.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-4, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. Serge Joyal: Honourable senators, I will try to make my comments brief and to the point, as we say in court.

There are two points I wish to touch upon following the speech delivered yesterday by the Leader of the Government in the Senate. The first concerns the appointment of the ethics officer, whom I prefer to call "counsellor". The second point has to do with the reference that the Leader of the Government made to the specific point I raised as a senator concerning the issue of privileges and how far our privileges can be extended to the ethics officer in the performance of his or her duties.

The latter is a fundamental point because it immediately opens intervention through the courts, if the ethics officer is not protected under the rights of Parliament. Honourable senators will remember from our previous discussions that judicial intervention into the internal affairs of the Senate was a major consideration. In fact, it was one of two considerations.

The first consideration deals with the appointment of the ethics officer or counsellor by Governor-in-Council. I commend the Leader of the Government for having recognized there is a problem. I understand he shares the concern that we have, that the process, as stated in the bill, is not complete at the very least.

The Leader of the Government recognized that it is impossible for the ethics officer to function properly, if he or she does not enjoy the support of a majority of senators on both sides of this chamber. This is the fundamental point of the action of the ethics officer, contrary to the Auditor General, the Privacy Commissioner, the Information Commissioner, the Chief Electoral Officer and so forth. Why? The answer is that this officer will have a unique responsibility in the internal affairs of the Senate. As such, each senator, whatever his or her political allegiance, must fully trust the ethics officer. I commend the Leader of the Government for having recognized that point.

The Leader of the Government expressed a wish that, through convention, we develop within this place a system that would satisfy our preoccupations. My concern with this intention is that it does not materialize in the legislation. I raised this point when we discussed the previous incarnation of this bill last fall.

The guarantees about which the Leader of the Government spoke yesterday should be in the text of the legislation so that whomever forms the government of the day will be bound by that process of selection to maintain the independence and the integrity of the ethics officer.

According to the bill, the Governor-in-Council who will appoint this officer has absolutely no constraints. Therefore, I wish to raise some questions. Where does one apply to present one's candidature as ethics officer? What are the qualifications? Who will be on the jury that will make the selection? All those concerns are normally managed by the Privy Council as in the case of the Auditor General, the Information Commissioner and all the other officers appointed under legislation. We know the procedure. In fact, we have declared our dissatisfaction with that procedure. Honourable senators will remember the Radwanski affair of last year and the statement made by the then Leader of the Government that we have to review that mechanism because it does not meet our objectives.

Unless we have a government commitment that there will be an enabling statute to review the process of appointment of Governor-in-Council appointees who are officers of Parliament, then we are putting our trust and our faith in heaven. However, at this point in time, we do not have a specific answer to the concern that the process of appointing officers of Parliament is unsatisfactory, which has been put before us repeatedly.

I remind honourable senators of the statement made by the then Leader of the Government in relation to the Radwanski affair.

There is another aspect to all this. The government says, "Well, maybe we should think of a convention." As honourable senators know, a convention is not enforceable in court. What is enforceable in court is a statute. The Supreme Court in the patriation case reference, to which the honourable leader referred yesterday, has made, as one would say, crystal clear and unambiguous that a convention cannot be enforced by a court.

• (1430)

What can be enforced in court is a statute. If the Governor-in-Council of the day decided to appoint an ethics officer or commissioner, even though we have developed a convention here, that convention would not stand up in court. That is why I still think that the amendment put forward by the Honourable Senator Bryden has some merit.

There is a point in the amendment of Senator Bryden — and I have continued to reflect on these things — that might be improved. Honourable senators will remember that Senator Bryden's amendment deals with the obligation of this chamber to appoint an ethics officer through a resolution with the respective concurrence of recognized parties in this chamber. This is the gist of Senator Bryden's amendment that was endorsed by a majority of members in this place.

My concern is that there is no time limit in that amendment. In other words, if the Senate decides to "stand" the issue — which, as we know, is a magical procedure in this chamber — there is no time limit. I believe we should consider adding the clear obligation to appoint the ethics counsellor within a specific period time, perhaps 30 or 50 sitting days, so that this house is under a compelling obligation to act. I give some merit to the positive criticism that was expressed following the adoption of that amendment.

Honourable senators, there are ways for us, at second reading, at committee stage and at third reading, to protect the principle of independence from the executive in a way that satisfies the government objective that there be an ethics officer. The ethics officer would be appointed within a reasonable period of time, and we would keep the governance of our internal affairs to ourselves, by ourselves and for ourselves.

I wish to raise another point. The honourable Leader of the Government in the Senate singled me out in his speech, as he did some other senators. At the time, I tried to catch the attention of our Speaker, to ask some questions, so I am happy the Leader of the Government is here today, because I should like to share my arguments with him on the issue of privileges.

What are we dealing with when we speak about privileges? We are not dealing with an exceptional condition for senators or members of Parliament. We are dealing with the capacity of this chamber to perform its constitutional duty of revising legislation. That is why each and every senator in this place has the right to exercise his or her judgment, without any outside intervention, to the best of his or her capacity or knowledge, soul and conscience. This is constitutional law. The government does not fall here; we cannot defeat the government. When we pronounce, we pronounce at the end of the process, from our soul and conscience.

The Leader of the Government in the Senate states that I am wrong in my interpretation of proposed section 20.5(2) because I contend that we cannot give the ethics officer privileges that do not exist in the British House of Commons.

The Honourable Leader of the Government says that the Constitution is a living tree, not a dead end, and that the court has the responsibility to interpret it.

I submit to the Leader of the Government and to honourable senators different case law that does not support his conclusion.

The first case that I should like to bring to the government leader's attention is a most recent one, from February 6, 2004. The ruling in the *Telezone* case came down three weeks ago and relates to a matter of privileges.

The Ontario Court of Appeal in *Telezone* dealt with the privileges of the former Minister of Finance who refused to testify during a session of Parliament. The court spoke about privileges and where they derive from. I shall quote paragraph 18 of the judgment:

> Two things are clear from the preamble and s. 18 of the *Constitution Act, 1867* and ss. 4 and 5 of the *Parliament of Canada Act*: (1) Canadian parliamentarians enjoy certain privileges, immunities and powers; and (2) the scope and contents of those privileges, immunities and powers must be measured against those "held, enjoyed and exercised" by the United Kingdom, especially in 1867.

Let me repeat: Our privileges must be measured against those enjoyed by the United Kingdom in 1867. That is what the Court of Appeal of Ontario decided three weeks ago.

The court went on to say, at paragraph 41:

> ... I do not see any development in constitutional or statute law since 1867 that would displace this conclusion.

What does that mean, honourable senators? It means that, according to section 18 of the Constitution, our privileges are to be measured with those enjoyed at the same time in the United Kingdom House of Commons. I do not like that very much, because I thought that, in 1982, when we were studying the patriation of the Constitution, we wanted Canada to have a totally self-controlled Constitution. In fact, in the Constitution we provided in the text of the patriation package, sections 52 and 53 provide that, unless provisions are changed at the time, they remain the same.

The British Columbia Court of Appeal, a court that the government leader will know very well, had to interpret whether, because they remain arcane or talk of a bygone past, certain sections of the Constitution are inoperative. I would remind honourable senators that this house was part of such a reflection in 1990. Do honourable senators remember section 26 of the Constitution, the section used by the then Prime Minister to appoint eight senators in the GST debate? There was concern that the use of section 26 of the Constitution was inoperative. In fact, the B.C. Attorney General contended, in a reference sent to the B.C. Court of Appeal by the B.C. government, that some sections of the Constitution were inoperative because they were obsolete. The text of section 26 is very arcane. It states that the Queen, on the advice of the Governor General, can appoint a certain number of senators under her great seal — not under the Canada seal, but under her great seal, that is, the seal of the Mother of Parliament.

The court came to the conclusion that, when the text of the Constitution is clear, we have no choice but to abide by this text.

The Hon. the Speaker: Honourable senators, the rules are clear. They provide that the second speaker is allowed 45 minutes, but the normal application of that rule has always been that that second speaker, when it is the government side that introduces, is given to the opposition. Senator Oliver adjourned the debate, but Senator Joyal is speaking. We have now gone 15 minutes.

May I ask honourable senators if it is our understanding that the opposition side will get the 45 minutes?

Hon. Senators: Yes.

The Hon. the Speaker: Accordingly, Senator Joyal, your 15 minutes have expired. Do you wish leave?

Senator Joyal: Yes, I wish leave, honourable senators. I shall complete my speech within five minutes.

Hon. Senators: Agreed.

• (1440)

Senator Joyal: This chamber was confronted 15 years ago with the same issue of the inoperability of some sections of the Constitution, especially the one dealing with the appointment of senators, coincidentally in British Columbia. The British Columbia Court Appeal ruled on this very issue in a reference on February 6, 1991. At that time, the Court of Appeal of British Columbia stated that when there is a clear and unambiguous expression in the Constitution, the "living tree" doctrine does not apply. The decision was rendered by five justices. I was surprised by the clarity of the court's decision. The Chief Justice said:

> Lastly, I am of the view that the "living tree" doctrine of constitutional interpretation, as discussed in Re Section 24 of the B.N.A. Act...does not justify a modification of the meaning of s. 26, which is expressed in clear and unambiguous terms.

Honourable senators, it is my contention that section 18, which defines our privileges, is clear and unambiguous. It is clear and unambiguous on the fact that we must measure our privileges on the basis of those that exist in the British House of Commons.

In case honourable senators think I am interpreting that out of the blue, I want to draw your attention to the testimony given by the Clerk of the other place on February 17 before the Standing Committee on Procedure and House Affairs. He clearly stated that section 4 of the Parliament of Canada Act is as valid today as it was when it was adopted in April 1868. The Canadian Parliament first recognized the equivalency of our privileges with those of the British House of Commons in a statute in 1868. It reappears in the revised statutes of 1886, 1906, 1952, 1971 and finally 1985.

Each and every time Parliament has studied the existence and the source of its privileges throughout the last 137 years, it has been done in the same way and with the same limitation that exists in section 18 of our Constitution.

Honourable senators, I was even more surprised when I woke up this morning and went to my computer to check the Supreme Court's ruling in the *Vaid* case. Senators will know that this case is before the Supreme Court of Canada and that it deals with parliamentary privilege. Some honourable senators have spent a lot of time dealing with this issue.

Yesterday, the House of Commons tabled its brief on the question before the Supreme Court. It is almost fresh from the printer. Paragraph 29 states, "The privileges set out in section 4(*a*) and (*b*) have been legislated in essentially the same form since the very first Parliament in 1867-68." The other place has recognized that they, too, are bound by the nature of the privileges of 1867, or, if the Parliament of the U.K. has changed its privileges, we can adjust ours.

There is a rationale behind that and there is a negative consequence. The rationale is in the preamble of the Constitution. We are bound to have a Constitution "similar in principle to the one of the U.K." That is the first thing that students learn in first year constitutional law.

This limit on our ability to enact legislation affecting these privileges raises questions. Senator Oliver has said that, as we are a mature Parliament, we might want to deal with this. I totally concur, but it will require a constitutional amendment. Section 18 deals as much with the privileges of the Senate and the House of Commons as with those of the provincial legislatures.

If we are to remove the reference to the British Parliament contained in section 18 as introduced in section 4 of a statute of this Parliament, we would have to amend the Constitution. So long as we do not amend the Constitution, we are bound by the 1990 *Rost v. Edwards* decision that, unfortunately, recognized that there was no such privilege in the U.K. and advised the U.K. House of Commons to legislate on the matter. Unfortunately, they did not legislate. Even though a joint committee of the British House of Commons and Lords recommended in 1999, in a two-inch-thick report, that they legislate, they have not legislated, so we are limited by that fact.

Honourable senators, when we look into the appointment and the role of the ethics officer, as much as we might want to ensure that this person remains under the control of a consensual agreement of the members of this house, enshrined by the free consent of however many parties exist, we must be sure that the courts will not intervene in the internal affairs of the Senate which are the responsibility of this chamber.

I have tried to make this simple, honourable senators. Those issues must be revisited by us in the most objective way, because once we have legislated we will all have to live with it. As I have said, if we do not want to find ourselves in court on this matter sooner or later, as the other place is presently, we should give the matter sober second thought.

Hon. Jack Austin (Leader of the Government): Honourable senators, I seek to ask a question of the very learned Senator Joyal.

Senator Joyal: I will accept a question with pleasure.

Senator Austin: This is great fun, honourable senators.

Senator St. Germain: Fun?

Senator Austin: Yes. It is serious, but it is great fun.

This Parliament has always had the designation "the high court of Parliament," and I think that the debate in which we are now engaged demonstrates again that particular part of its role.

I go some distance with the argument of the Honourable Senator Joyal, but, as I said yesterday, it is my view that *Rost v. Edwards* says that the power to extend privilege by statute is inherent in the British Parliament. That power existed in 1867; therefore, we have that same power. Is this the nature of parliamentary privilege as it is usually exercised? When I say "this," I mean that in Bill C-4 we are seeking to legislate a parliamentary privilege, as permitted in *Rost v. Edwards*, and it could be done in the U.K. It comes to a neat point, although not the only point but one I would ask the honourable senator to consider and to respond to either now or at a later time.

• (1450)

Senator Joyal: The honourable senator raises an important issue: How do we create new privileges? Well, that is easy. The court has already answered that question in many famous Hansard cases dating back to 1770. The way to create privileges is, essentially, through an act of Parliament concurred in by both chambers. In other words, the other place cannot create a privilege for itself that we could not have. It needs the concurrence of both places.

Section 4 of the Parliament of Canada Act, which is extremely old, dating back to the first breath of Confederation, clearly states in subsections (*a*) and (*b*) that when we create the privilege, it must be done by an act of Parliament and it must be in accordance with what exists at the time in the U.K. Section 4 has another qualification, which states: "...as much as they are consistent with the British North America Act."

We legislated in 1868, and although we have restructured that power over the years, we have maintained those two limits to our capacity to legislate new privileges as enshrined in section 4. I would think that the Standing Committee on Rules, Procedure and the Rights of Parliament, which studied the issue of privileges and the relevant case to which I referred, would attempt to understand that. Over the years, there have been many cases before the courts, so that we know exactly what our limits should be and whether we should revisit section 4. I believe that the honourable leader wants to invite us to think about all the consequences involved in one simple section of the bill, which seems to be the most efficient way to protect our capacity to rule our internal affairs, but it might be a section containing many holes.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, when we patriated the Constitution in 1982, we asked London for the power to amend the Constitution at will in the future. I have always believed that, under section 41, we could completely change our Constitutional system, as long as we had the unanimous agreement of the federal government and the ten provinces.

We can even enact legislation with respect to the responsibilities of the Queen, Governor General, and lieutenant-governors; the Senate and its abolition; the amending formula, and so forth. I conclude that this extremely important section, section 18, can be amended. If we are unable to amend section 18, which deals solely with parliamentary privilege — a broad subject nonetheless — how are we to interpret section 41, which states that Canada could adopt a system other than a monarchy? I do not want to push for a republic.

I have a question. I simply ask, we can make our own choice. In my opinion, Canada has remained true to the Crown. The Queen is the Queen of Canada.

However, I cannot imagine how it is possible, in the Constitution we have fully patriated to Canada, to prevent section 18 of our own Constitution from being amended. This would mean that, in 2500, we would still be subject to the limits of British parliamentary privilege. That does not make sense, to say the least! I would argue against such a position with great enthusiasm in a reference to the Supreme Court of Canada.

In my opinion, we have totally patriated the Constitution. If we wanted to change our system, we could. The decision must be unanimous, of course, which is not easy. Why would Canadians not have the authority to amend section 18, which is part of our Constitution? If we do not, this means we will forever be under British rule. Either we are Canadian or we are not.

I think we could amend section 18 of the Constitution with the agreement of the federal and provincial governments. If we can amend the responsibilities of the Queen, the Governor General and lieutenant-governors, if we can amend the composition of the Supreme Court of Canada, if we can amend the amending formula, clearly we can amend section 18.

Senator Nolin: I do not disagree.

Senator Beaudoin: We can make all the amendments in Canada we want; otherwise our Constitution has not really been patriated.

Senator Joyal: Honourable senators, I want to thank the senator for his question. I would say two things. I share his opinion that we can amend section 18. In my explanation, I never said we could not.

Senator Beaudoin: Then I spoke for no reason.

[*English*]

Senator Joyal: I never contended that we could not amend section 18 and I will go even further: I think that we could amend section 18 through section 44 of the 1982 patriation package. Section 44 states that:

> Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Section 18 deals with the Senate and the House of Commons. There is a clear statement in section 44 of the Constitution that recognizes that section 18 could be amended. Section 18 has not been amended. It is the law of the land and it stands as it is. My contention is that as long as it is not amended, and some authors have written about this, we have to apply it as the British Columbia Court of Appeal has said, "...when the terms are clear and unambiguous." That is essentially the argument.

I invite the honourable leader to reflect on this position. Perhaps we should not amend the section. This may be a term of reference that the Standing Committee on Rules, Procedures and the Rights of Parliament would want to consider because, as the honourable senator said, it is a part of a grown-up democracy in Parliament. Herein lies the problem.

If the honourable senator feels strongly, he has four weeks from the tabling of the brief in the House of Commons to consider an intervention before the Supreme Court. If there is something in this brief with which we do not concur or politely disagree, the honourable senator has four weeks to decide whether to seek intervener status before the court and to make his case. Perhaps we could go together to defend that stand because it is at the heart of the case that the court will soon decide.

[*Translation*]

Senator Beaudoin: Honourable senators, I am very glad Senator Joyal has said we can amend section 18. Bravo! If you had said so in the first place, it would have made things easier, but I am only teasing you. We know each other well. As long as this section is not amended, we are governed by it.

I have nothing more to say than that. Patriation is very important. That is why I think 1982 was so important: we acquired a Charter of Rights and Freedoms in our Constitution, which is quite something; we patriated the amending formula, which is also quite something; we kept the monarchy because we like it; we kept our British parliamentary system because we like it. However, we can do what we want; that is all that I ask.

• (1500)

[*English*]

Hon. Anne C. Cools: Honourable senators, I have been following the debate with some care. I should like to put a question or two to Senator Joyal, but I wish to begin by saying that I think Senator Joyal is correct.

Regarding the BNA Act, 1867, section 18, I support Senator Austin in what he just said. I do not have it in front of me, but there is a famous quotation by Sir Edward Coke, from his Fourth Part of the Institutes of the Laws of England, where he said:

> As every court of justice hath laws and customs for its direction...so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo parliamenti.*

One of the nice things about the government leader is his knowledge of the history and the mind of the law. That is a prelude to my question.

Honourable senators, the constitutional term is "received." Section 18 did more than enact the privileges of Parliament. What section 18 did constitutionally was to "receive" from England the ancient law, the ancient *lex et consuetudo parliamenti*, and that is the law that grants the privileges of Parliament. What section 18 does, honourable senators, is to receive into Canada the ancient law that had been in motion and developing for close to 1,000 years.

One of the reasons the privileges of the Parliament of Canada are fixed is that the privileges that were received by the law of Parliament from England were then fixed as well. I should like to put to Senator Joyal the resolution that was passed — because this was a major issue in the U.K. — as to how far the Houses would keep extending and expanding privileges.

In 1704, honourable senators, a resolution was passed in the U.K., by both chambers, that stated as follows:

> That neither house of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;...

Honourable senators, the framing of the BNA Act in 1867 and its articulation of the reception of the law of Parliament attempted to be very consistent with what was happening in the U.K. In the U.K., the privileges by then had been quite firmly and quite well fixed. Therefore, to that extent, Senator Joyal is absolutely correct.

That brings me to my question. I do not know if Senator Joyal has wrapped his mind around it. Since the privileges of Parliament are fixed, and we have Bill C-4 before us, a resurrected bill — I do not understand how it could be resurrected in the House of Commons because the corpse died here, but that is another point — if the privileges of the Senate and the House of Commons are equal, according to section 18, and if they are fixed, has Senator Joyal wrapped his mind around the question as to why this bill is before us? If the privileges are fixed, and if they are equal and coordinate, how is it that the House of Commons has acquired a privilege to defeat or to nullify a royal proclamation of prorogation? I wonder if the honourable senator has thought about that, because, to my mind, the House of Commons has no power to defeat a writ of prorogation. Neither House does.

My second question, honourable senators, is this: If the privileges are fixed and no new privilege can be created by the House of Commons or the Senate, how is it that this bill is again before us? Without three readings, and debate on three readings, and votes in the House of Commons, how is it that the House of Commons has assumed a privilege unto itself to be able to amend the great law and custom of Parliament in respect of the ancient law, which states that all bills in Parliament, to qualify for presentation to Her Majesty for Royal Assent, should have three readings in each House?

How is it that the House of Commons has been able to take these new privileges and just create them? Why is it that this chamber is being compelled to study this bill and consider this bill on the strength of unknown, if not fraudulent, privileges that the House of Commons has taken unto itself?

Senator Smith is looking at me, but I tell you, honourable senators, this is a critical and pivotal matter. Honourable senators, there is no power in either chamber to defeat or abrogate a writ of prorogation. A writ of prorogation is a termination of all proceedings.

Senator Joyal: Honourable senators, I shall be brief. I think honourable senators will share my concern when reading section 18 in conjunction with subsections 4(*a*) and 4(*b*) of the Parliament of Canada Act, because it is a step-by-step approach.

Section 18, as Senator Cools properly said, transfers to our Parliament the privileges enjoyed by the U.K. House of Commons in 1867. In the year following Confederation, a problem arose because legislation adopted by the Canadian Parliament of the time enacted a privilege for a House of Commons committee to administer oaths for witnesses when they were testifying in the context of issues related to, say, a railway scandal at the time.

The House of Commons adopted legislation to allow the administration of the oath to witnesses. The Senate adopted the bill, but some senators stood at the time and said, "There is a problem there, because we have section 18, which does not recognize that, in the U.K., at the same time, in 1867, there was no such thing as the administering of oaths to witnesses to any committee." Some senators expressed that view. Nevertheless, the bill passed, the Governor General signed it, and it was sent to Her Majesty.

Queen Victoria, in her imperial Privy Council, refused the bill. She disallowed the bill on the basis that the U.K. Parliament did not enjoy that privilege at that time. In the following months, the U.K. Parliament adopted the legislation; we re-enacted our legislation, and it has been valid since then. That was in 1868, the very first year of Confederation.

What I want to draw to the attention of Honourable Senator Cools is that there is a possibility for us to create privileges — that is what section 4 states. However, those privileges have to be measured against the level of privileges that exist at the time, when we create them, in the U.K. House of Commons. As I said, I could quote another decision of the Ontario Court of Appeal last year that recognized exactly that.

In other words, this is the law. We might not like it, but, if we do not like it, we should charge our Standing Committee on Rules, Procedures and the Rights of Parliament to study this and made a recommendation to amend this part of the Constitution.

• (1510)

Hon. John G. Bryden: Honourable senators, I would like to ask a question. I want to understand the implications that this wonderful debate has had on the bill before us. I am a simple country lawyer from Murray Corner, New Brunswick. I think I know what the important issue is, but I want to be sure that I understand Senator Joyal correctly.

Proposed section 20.5(2) of the bill purports to extend privileges to the ethics officer, and states:

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

My understanding is that if this bill passes, we, as senators, would be dealing with a duly named ethics officer. We would confide in that person our dearest thoughts, such as the boards we sit on and the shares we own in certain companies. If someone were to sue one of us or if there were to be an issue and the ethics officer had knowledge that would relate to any action, this proposed section would purport to protect or prevent that ethics officer from being required to provide information.

I believe the thrust of the honourable senator's comment is that, without changing the Constitution, this is a false protection; that is to say, this proposed section does not protect us at all and is subject to a very meaningful constitutional challenge.

Senator Joyal: Honourable senators, that is essentially my point. The ethics officer would not be a member of the Senate or of the other place. He or she would not begin with any of the rights that we enjoy in the performance of our duties. What are those privileges? They essentially ensure that we can exercise our duties with no intervention from the court. No one can take an injunction against Senator Bryden, when he is here, to speak in a specific way or to vote in a specific way. When he entered this place, he was totally protected in his capacity as a legislator. With this bill, we are trying to extend to an ethics officer, who is not a senator or a member of Parliament, the same rights, privileges and immunities that honourable senators enjoy in their capacity as senators.

If that section is null and void, honourable senators, it means that any court can intervene and look into all those aspects of his activities, and we have, of course, opened an aspect of our internal affairs to court revision. We should think twice before we do that because, of course, it has been an essential criterion of the legislative autonomy of Parliament to be outside of court interference.

On motion of Senator Oliver, debate adjourned.

BILL TO CHANGE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING—DEBATE ADJOURNED

Hon. David P. Smith moved the second reading of Bill C-20, to change the names of certain electoral districts.

He said: Honourable senators, I am pleased to sponsor and to open second reading debate on Bill C-20.

Honourable senators are aware that the ridings in the other place have recently been updated by electoral boundary commissions established under the Electoral Boundaries Readjustment Act. Of course, this occurs after each decennial census. In accordance with the requirements of the act, the process began following the 2001 decennial census with the establishment of electoral boundary commissions for each province.

Thanks to the work of the commissions, a new representation order was proclaimed on August 25, 2003, providing a new electoral map for Canada. Seven new ridings were created: two in British Columbia, two in Alberta and three in Ontario.

These new constituencies ensure that the relative increases in population in these three provinces are reflected in the composition of the House of Commons. However, the representation order also changed many riding names, and some members from the other place, from three of the four parties — we are down to four now — expressed concern over some of the new names chosen for their ridings.

Now, honourable senators, we can appreciate that a riding's name is very important to its member and the people that he or she represents. Various factors are considered, such as geography, history and other identifying characteristics of the electoral district that the member represents. With regard to the 38 ridings that are before us, consensus was reached as to the new names. I will come to that shortly.

Based on the suggestions of the members concerned, on October 22, 2003, a new bill was introduced in the House of Commons, which is now this bill. It is one that changes the names of 38 electoral ridings contained in the 2003 representation order. Bill C-53, as it then was — now it is Bill C-20 — received unanimous consent for all remaining stages the following day. I would just like to repeat that sentence because it is such harmonic and melodic music to my ears: It received unanimous consent for all remaining stages the following day. That is evidence that the process has determined that the bill is very fair. Everyone can put partisan differences aside. I trust that we will be able to demonstrate the same degree of non-partisanship, and I believe that this will occur with us.

The previous bill received first and second reading in the Senate on October 27 and 29 of last year, and it was then referred to the Standing Senate Committee on Legal and Constitutional Affairs. The committee had not begun consideration of the bill when Parliament was prorogued on November 12, 2003.

The government reintroduced the bill on February 23, 2004, as Bill C-20. Once again, the bill received unanimous consent and passed through all stages the same day. Not only did this magnanimous unanimity occur once, but twice.

The new bill is identical except in one respect. It now contains a coming-into-force date of September 1, 2004. That is simply to accommodate operational pressures at Elections Canada, particularly as a result of the coming into force of Bill C-24 on January 1, 2004. That is the bill regarding political financing. As well, there is the implementation of Canada's new electoral boundaries following their proclamation on August 25, 2003.

This slightly delayed coming-into-force date will give Elections Canada the necessary lead time it requires to adjust to and implement the riding name changes, while coping with other workloads.

• (1520)

At the same time, the bill provides assurances to the members concerned that the names of their ridings will be changed in accordance with their wishes and the agreement of all parties in the other place.

It is worth noting that this bill is not the first of its kind. Parliament has intervened to change the names of electoral districts several times in the past. In fact, 57 electoral district name changes have been carried out by four separate acts since the 1996 representation order.

The process that was followed was that the house leaders from all the parties agreed that only those name changes would proceed on which there was unanimity. It is my understanding that 40 name changes were proposed, two in which there was no unanimity. I do not think we need to get into that, although one of the members from those ridings complained to me this morning, but he was rather resigned to his fate.

For the record, it is also worth noting that of the 38, 11 came from the Bloc, nine came from the Liberal Party, nine came from the PC Party, and nine came from the Alliance Party. The total of those numbers is 38. As I mentioned, where there was no unanimity, in the instance of two other ones, they were not included.

Honourable senators, as I mentioned earlier, this bill received unanimous consent in the other place. I trust that Canadians can have their riding names changed as a result of a process that is hard to disagree with, whereby all four parties put these changes forward unanimously.

I should mention that there were no NDP name changes requested. However, the NDP did cooperate and were part of the group that determined unanimity on the 38 that have proceeded.

I thank honourable senators for their attention.

Hon. Lowell Murray: Honourable senators, first, might I ask a question of the Honourable Senator Smith?

Senator Smith: Of course.

Senator Murray: The names that are being changed were settled upon, were they not, by the various redistribution commissions in the provinces? Did the members in question and other citizens not have an opportunity in the process to ask the redistribution commissions to change the names before the final report came in?

Senator Smith: At an early stage, that process occurred. However, there were these instances where the name that emerged was, for whatever reasons, not agreed to. Each of the parties engaged in the same process. As I said, honourable senators, there were 11 instances from the Bloc, and the other three parties, excluding the NDP, had nine each. The House leaders met, consulted, and there was unanimity. It was determined by the House leaders in consultation.

Senator Murray: Honourable senators, this is of the same order as the redistribution process itself. The members, for the time being, from those various constituencies, do not own those constituencies. It should not be left to them, as it is being left to them, to decide what the name of the constituency should be.

My friend talks about a process. Can he describe the process? He says there were 40 requests, two of which fell by the wayside and the others were accepted in a nice spirit of — is it comity or log-rolling?

Senator Smith: I believe comity is the right word. I actually find it refreshing and pleasing to the ear to learn that our House leaders can sit down and reach an accommodation.

The honourable senator asks: Who is accountable? In most instances, I believe the incumbents are running for re-election. I suppose if someone took great exception and wanted to make an issue of it, he or she could do so.

My understanding is that it was done very much in a spirit of goodwill. Frankly, if it were not done in a spirit of goodwill, I do not think all of the processes could have been completed so quickly, twice. That just does not happen.

Senator Murray: I would suggest to the honourable senator that whether it was achieved in a spirit of goodwill or not is irrelevant. I am sure there was a lot of goodwill because, whenever the interests of incumbents are involved, as they perceive them, what you have is a lot of back-scratching, and it is easy to get unanimous agreement.

Let me ask the honourable senator if he can defend these propositions, about which I will give a couple of examples. The riding of Charlevoix—Montmorency will now become Montmorency—Charlevoix—Haute-Côte-Nord. What that is about is a member of Parliament who wants to throw in as many parts of the constituency as possible into the name of the constituency.

Honourable senators, look at Matapédia—Matane. It will become Haute-Gaspésie—La Mitis—Matane—Matapédia. Good Lord.

Rimouski—Témiscouata, which is long enough already becomes Rimouski-Neigette—Témiscouata—Les Basques.

The electoral district of Rivière-du-Loup—Montmagny — the name of which is long enough already — becomes Montmagny—L'Islet—Kamouraska—Rivière-du-Loup. They have named practically every poll in the riding.

I do not want to pick on Quebec. People may accuse me of Quebec bashing. Let me go on Ontario. Kitchener—Conestoga becomes Kitchener—Wilmot—Wellesley—Woolwich. This is nonsense.

We should block this thing. We should not allow this thing to go through at all. Leave the names of the ridings the way the redistribution commissions named them. The members had an opportunity to change these. For good reason, impartial commissions decided against them.

At any rate, I will not be the chief speaker on this bill.

Senator Smith: Has the honourable senator completed his question?

Senator Murray: Yes, I have. I look forward to the honourable senator's answer.

Senator Smith: I have greater faith in the goodwill of the various members who may have brought these motions. I think it is fair to show them respect for the feel and the nuance, the massaging they want to do, to come up with what they think is the most appropriate name.

Honourable senators, in the same spirit of harmony, it is fine to move this on, given the unanimity with which it was passed in the other place.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am a little confused as to why the effective date is only September of this year. The government is pushing very hard to have another bill passed so that the new electoral map will come into effect any time after April 1. Do I gather that, if an election were called between April 1 and September, it will be the names recommended by the commissions that will be on the ballots and not the new names that these members are keen to have adopted? Why the delay?

Senator Smith: It is my understanding that the new names would not come into effect until September 1. I know there has been some misplaced scepticism about whether Elections Canada will be ready with regard to a date, say after April 1, and that is the subject of another bill. We have heard from Mr. Kingsley repeatedly — in fact, I think he will be at committee today, where that question can be put to him — that they are ready to do that.

As I understand it, they do have some workload, particularly flowing from the financing situation of the bill relating to election financing. It was agreeable to everyone that it was fine to put this off until September 1. That is what has been done.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, to begin I wanted to ask a few questions of my old friend from the Young Liberals — who is still my friend I hope.

[*English*]

Instead of doing so, without my notes, I will speak on the bill. It is a well-known fact that I oppose this bill for the same reason put forward by our esteemed colleague Senator Murray.

• (1530)

A due process took place. It is almost like redoing completely the work done by those commissioners that sat across Canada and listened to representations.

My colleague saying that there was happy unanimity in the other chamber does not in any way, shape or form surprise me. They are totally in a conflict of interest, as they have always been because they are dealing with things pertaining to themselves. I have always opposed that in the House of Commons, and I do not see why I should not oppose it here.

I have always had the honour to represent the district of Montreal-Saint Denis, which was held by my predecessor, Azellus Denis, who was the longest serving parliamentarian in Canada — a total of 55 years. He served in both chambers. I do not know how he handled that. I served longer that he did in the House of Commons, but, unfortunately, I cannot defeat his record for serving in the Senate — he died in office after having been a senator for 27 years — because I must retire at the age of 75. That is why I am announcing that I may run in my old seat, if it is available.

Having said that, I oppose this bill for reasons I have stated often in the past — and will not bore you by repeating them. There is a conflict of interest here. It is great that there is unanimity between the political parties — and I appreciate very much the argument of Senator Smith — but that does not convince me that it is the way to go. On one occasion, honourable senators, not even being a candidate for Speaker of the House of Commons — and I did not even put my name forward — my name stayed on the ballot until the seventh vote. Was it a mistake or not? Only 26 Liberals of 301 came to vote.

I cannot imagine the Speaker of the House of Commons having to deal with the new electoral district names every time he has to recognize a member. I will not repeat them all, but, as one example, he will be required to say the following: "The floor is now open to the honourable member of Kitchener—Conestoga—Wilmot—Wellesley—Woolwich."

Not that that, in itself, is a strong argument, but I like brevity. Senator Murray forgot the last one — West Vancouver—Sunshine Coast would become West Vancouver—Sunshine Coast Sea to Sky. At first, I thought it was sea-to-sea, sky country. There are limits as to what one can do.

Second, I am not convinced — however, the honourable senator is convincing me by his strong argument in answer to the Leader of the Opposition, the distinguished Honourable Senator Lynch-Staunton, whose grandfather sat in the Senate. Some honourable senators may not know that. I hope I am correct in that.

The honourable senator said that this would not come into effect before September 1. I am not sure about that, because most of those who came to make a representation to me are convinced that we must pass the bill because it needs to be in place if there were an election before the summer. I will not name names.

In their urgency in the other chamber, some members may not have read the last half of this bill. They were promised at the last minute that their name would be changed to something else, and that was enough. They passed it unanimously. As often happens in the House of Commons, some of members may not have read the last half of the bill, which states that the act would come into effect September 1, 2004.

I intend to rush to tell those who came to see me that the bill will not come into effect until September, if the bill passes as requested. I am sure that every one of them will rush to their whip. I have had representation from two of the parties that were mentioned. One was the Bloc — and I will not mention the other. Personally, I think the time has come to say no.

Honourable senators, I will finish with the question that I want to ask the honourable senator. I remember many years ago that a member of Parliament from the south shore of Montreal — he was a very dear friend of mine, and of many members here — had a big fight with his returning officer. I am speaking of Mr. Pierre Deniger. There was a big fight in his local association regarding the returning officer. He represented the riding of Laprairie, Quebec. There was a returning officer there who did not meet the pleasure of many people. A bill was presented to change the name of Laprairie to LaPrairie. I had to look twice. They changed Laprairie to LaPrairie — capital "P". It was a new district, so they had to appoint a new returning officer.

Let me ask the honourable senator the following question — and he can give me his answer in the corridor. Does that mean that all the returning officers — 308 of them — will have to be reappointed? I presume it means that they will have to be appointed, probably by an Order in Council.

Orders in Council seem to be come forth rapidly these days. Perhaps 38 more will not change much. However, they will have to redo the consultation, and redo the Orders in Council, to arrive at the monstrosity of this multiplicity of names.

Honourable senators, if this were to be put to a vote, with all due respect to my good friend on the other side, I will vote against. To remain consistent with my views on this issue, I am not receiving this bill with great enthusiasm.

Senator Smith: Honourable senators, I was not aware that that was a question.

Senator Prud'homme: No, I said it was a speech.

Senator Smith: It was a speech.

The Hon. the Speaker: Then you do not have to answer, Senator Smith, but you can offer a comment, if you wish.

Senator Lynch-Staunton: Let him comment.

Senator Austin: You can ask him a question.

The Hon. the Speaker: I wondered as well whether Senator Prud'homme was speaking or whether he was asking a question.

It turns out that Senator Prud'homme was not asking a question. I was wondering, because of the tradition that we follow in our rules of a 45-minute time allocation, if it starts on the government side, for the opposition side. It was my intention to interrupt Senator Prud'homme at 15 minutes to clarify, as I did with Senator Joyal. It is not always easy to determine whether an honourable senator is asking a question.

In this case, it turns out that the Honourable Senator Prud'homme was not asking a question, but rather that he was speaking.

Senator Prud'homme: I made that clear.

The Hon. the Speaker: Honourable senators, in the case, I should not have gone to Senator Smith, except that Senator Smith is entitled, not in closing the debate, because we provide for this in our rules, but to make a comment or ask a question of Senator Prud'homme.

Senator Prud'homme: That is right, yes.

The Hon. the Speaker: Do you wish to make a comment, Senator Smith?

Senator Prud'homme: Honourable senators, regarding the rules, His Honour was returning to his chair when I said, very clearly at the beginning of my speech, that I had initially intended to ask a question but instead decided to make a speech. That is what I said. It was not a question.

However, His Honour is absolutely right: I have completed my speech. I do not intend to use up the 15 minutes allotted to me. Hence, of course, the honourable senator can ask me questions now. As His Honour pointed out, he will not terminate the debate.

The Hon. the Speaker: Do you wish to comment, Senator Smith?

Senator Smith: Honourable senators, I will simply say that I would defend to the death the right of Senator Prud'homme to vote against this bill.

• (1540)

The Hon. the Speaker: Honourable senators, allow me to clarify that we are of the understanding that the 45 minutes will be given to the first speaker on the opposition side. Is it agreed?

Hon. Senators: Agreed.

On motion of Senator Kinsella, debate adjourned.

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Harb, seconded by the Honourable Senator Biron, for the second reading of Bill C-14, to amend the Criminal Code and other Acts.

Hon. Pierre Claude Nolin: Honourable senators, I am pleased today to comment on some of the provisions in Bill C-14.

Although this is an omnibus piece of legislation, it makes important changes to the Criminal Code of Canada that should be studied very carefully by our Standing Senate Committee on Legal and Constitutional Affairs.

Yesterday, Senator Harb, who was a little pressed for time, made an overly brief presentation of the amendments proposed by this parliamentary initiative regarding the placing, among other things, of traps for criminal purposes and intercepting private communications.

While I support the principles underlying these amendments, I would like to share a few thoughts which, I hope, will help us review this legislation. Without any further delay, let us begin with the issue of traps.

From the outset, it is clear that Bill C-14 seeks to come down more harshly than the Criminal Code does on the use of traps by criminal organizations to protect their cannabis grow-ops against surprise visits by citizens who are a little too curious, by police officers, or by firemen.

In recent years, the number of grow-ops for cannabis and related products has increased significantly, particularly those in Quebec, Ontario and British Columbia, which are the three main producers of this illicit substance in Canada.

In order to evade law enforcement agencies, organized crime has greatly perfected its cannabis production techniques.

In the three provinces that I just mentioned, outdoor growing is progressively being replaced by cultivation in houses, apartment buildings located in formerly quiet residential areas, semi-trailers, barns, warehouses, empty factories and underground bunkers in large urban centres.

Because of their clandestine nature, the use of traps poses an increasing threat to the safety and, at times, the lives of many residents.

These traps are also a threat to police officers who enforce the provisions of the Criminal Code and of the Controlled Drugs and Substances Act, and to firemen who answer calls from citizens concerned by the heat or the toxic fumes released during the cultivation of cannabis, not to mention other suspicious and even violent activities related to the presence of organized crime in their neighbourhood or apartment building.

These "protection systems" often take the form of holes in the floor or in the ground, electrical wires, explosives, devices designed to shoot a bullet or an arrow, or pieces of metal laid on the ground. According to RCMP reports, the use of such devices is increasing.

Honourable senators, the Criminal Code already includes a provision making it a criminal offence to place a trap with the intention to cause bodily harm or death.

The Canadian Division of the International Association of Firefighters and the Canadian Professional Police Association inform us that this provision has not been sufficient to adequately protect their members, several of whom have been seriously injured by such systems.

Honourable senators, Bill C-14 responds, or attempts to respond, to the legitimate concerns of the two associations I have mentioned.

That said, I would now like to ask you this question: Will the amendments proposed in Bill C-14 put an end to the use of traps by cannabis growers?

Over the years, tougher criminal sanctions to combat the phenomenon of cannabis have had no tangible effect on the trend toward the use of this substance in Canada or anywhere in the world.

From this perspective, I would like to believe, but do not, that increasing the prison sentence for the use of traps from five to ten years, and the creation of a new offence intended to punish more severely the use of such devices in a place kept or used for the purpose of committing other offences will have any effect on the practices of organized crime. This is why.

The indoor growing methods that I mentioned earlier make it possible to produce thousands of cannabis plants quite easily. For example, in January 2002 the police force of Sainte-Marthe-sur-le-Lac, northwest of Montreal, found 13 hydroponic grow-ops in a new residential area.

In total, more than 6,000 plants were seized by the police. This January, police in Barrie, Ontario, discovered and seized more than 30,000 plants in a former brewery.

According to the RCMP, two or three cases of indoor growing involving 10,000 to 20,000 plants are discovered each year in Canada.

Cannabis production is an extremely lucrative activity for organized crime, because it finances most of its other illicit activities such as money laundering, illegal gambling and extortion.

Although estimates of the size of the Canadian cannabis market are not reliable, the Senate Special Committee on Illegal Drugs estimated the total production of this substance in Canada at nearly $6 billion in 2002.

It is therefore understandable that criminal organizations no longer hesitate to use traps to protect their crops. The lure of money is so strong that it supersedes fundamental considerations for health, safety and human life.

Honourable senators, some of you may say that I am being pessimistic about the real chances for success of the amendments to the Criminal Code provisions on the placing of traps, since the report of the committee I had the honour of chairing recommended solutions that would have substantially slowed the proliferation of these often quite dangerous grow-ops throughout Canada.

• (1550)

Nothing could be further from my mind! As long as there is a prohibition on marijuana, we legislators will have to ensure that the Criminal Code severely punishes those who knowingly place a trap that is likely to cause death or bodily harm to innocent persons, particularly firefighters and police officers.

Honourable senators, I wanted only to prevent the amendments proposed in Bill C-14 from being seen as a panacea, the ultimate means of solving the problems caused, for example, by the cultivation of cannabis. This is a temporary solution. Is it a permanent solution to this scourge? No. We must not let ourselves think that increasing the sentences in the Criminal Code will solve this problem.

Furthermore, if in the near future the federal government adopts a system regulating the cultivation, distribution and possession of cannabis as our committee has recommended, the offences for placing traps need not be struck, as these provisions could be used to counter the activities of smugglers.

Now I would like to touch briefly on the amendments proposed in Bill C-14 regarding the interception of private communications.

In the context of the September 11, 2001 attacks, and the many cyber-attacks that have occurred over the past few years in the public and private sectors, protecting computer systems and the personal and confidential data stored on them from cyber-crime, as provided for in Bill C-14, is a highly commendable objective.

Let us not forget that many key sectors of the Canadian economy and the government depend on the security and stability of these systems.

Nonetheless, assurances by representatives of the Department of Justice that Bill C-14 will minimize the risk of excessive intrusion in the private lives of citizens should not stop us from enquiring about the training that public computer systems managers will receive as to the responsible handling of the data they will be intercepting in the near future.

We must also be informed about the standards that will be set by the Treasury Board Secretariat for preventing any abuse and guaranteeing that Canadians' right to privacy will be respected.

In the same vein, we must seriously question the measures that will be adopted by the various national associations representing private business interests in order to minimize the risks of abuse and prevent the fraudulent use of data intercepted.

Section 184 (2) of the Criminal Code already authorizes companies to intercept private communications in order to ensure the provision or quality of telephone or electronic services.

It would be interesting to know the practices currently used by Canadian companies for protecting the privacy of their clients and guaranteeing the accountability of their managers.

Honourable senators, these concerns are legitimate since it will not be the police, but managers, who will be intercepting this highly personal information.

There is currently an increasing number of Canadians who are concerned about the proliferation of private security agencies. Even though these companies possess significant powers, they are not subjected to the same requirements as police forces in terms of professional training, code of conduct and accountability, to ensure the protection of the fundamental rights provided under the Canadian Charter of Rights and Freedoms.

The situation that I just described is similar to the one that Bill C-14 could create. Therefore, we must be careful before giving these new powers to managers.

Moreover, the amendments to the Criminal Code cannot, alone, adequately protect computer systems in the private sector, and particularly in the public sector, from cyber-attacks.

In 1999, the report of the Special Senate Committee on Security and Intelligence revealed some serious flaws in the federal strategy to fight this new plague. It would be interesting to know if, since the events of September 11, 2001, the departments involved in this issue have taken the necessary measures to correct this disturbing situation.

Honourable senators, before concluding, I would like to point out that Bill C-14 also amends the provisions of the Criminal Code to ensure that victims of criminal acts are compensated more quickly by their aggressor.

In conclusion, I wish to reiterate my support for the principles that underlie Bill C-14. Again, our Committee on Legal and Constitutional Affairs will conduct a thorough and comprehensive study of this legislation to ensure that the fundamental rights of Canadians are fully respected.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*English*]

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I know that we will be seeing the clock at 4 p.m., but before adjourning I think we can find agreement that all remaining items on the *Order Paper and Notice Paper* shall retain their position.

The Hon. the Speaker: Is it agreed, honourable senators, that at 4 p.m., at which time I am obliged to call the adjournment, all remaining items on the *Order Paper and Notice Paper* shall stand in their place until the next sitting of the Senate?

Hon. Senators: Agreed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): What time does His Honour see?

The Hon. the Speaker: It is 3:59 p.m. Shall I call it four o'clock, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: I will see the clock as four o'clock.

The Senate adjourned until Thursday, February 26, 2004, at 1:30 p.m.

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