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**Wednesday, March 24, 2004**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Wednesday, March 24, 2004

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

Prayers.

### SENATORS' STATEMENTS

#### TRIBUTES

THE HONOURABLE B. ALASDAIR GRAHAM

**The Hon. the Speaker:** Honourable senators, I have received a letter from the Honourable Senator Austin, Leader of the Government in the Senate, pursuant to rule 22(10), requesting that additional time be provided for Senators' Statements today for purposes of paying tribute to our soon to be retired colleague, the Honourable Senator Graham.

**Hon. Jack Austin (Leader of the Government):** Honourable senators, our esteemed and beloved colleague Senator Alasdair Graham will, by law, be compulsorily severed from his seat in the Senate on May 21, 2004, on reaching the relatively young age of 75. It is proper and just that we acknowledge his contribution and achievements in public life.

Senator Graham was appointed to the Senate by the Right Honourable Pierre Trudeau on April 27, 1972, and thus will have served here for more than 32 years. It seems a short time to have put in place such a distinguished record.

As honourable senators will know, Senator Graham served as Leader of the Government in the Senate from 1997 to 1999 and as deputy leader from 1995 to 1997. These were busy years in the agenda of Parliament, and bridged the time when a Progressive Conservative majority became a Liberal majority in this place, not entirely of Senator Graham's doing, of course.

The career of Senator Graham covered many roles. In his early years, he was a teacher, journalist and broadcaster in his native Cape Breton, Nova Scotia. He played a significant role as an executive of the Cape Breton Development Corporation, otherwise known as Devco. It was a time in Canadian policy when government believed it could play a directing role in kick-starting new economic growth. Senator Graham worked hard to find new work for the people of Cape Breton, taking to heart the words from his mentor, Father Jimmy Tomkins of Reserve Mines in Cape Breton that, "the little people together is a giant."

From 1975 to 1980, Senator Graham served as president of the Liberal Party of Canada. Out of this time came his deep commitment to the democratic process and his determination to spread the ideas and practices of democracy to the emerging societies of the world system. He took that message around the world in his leadership work with Liberal International and the National Democratic Institute. His book, *The Seeds of Freedom: Personal Reflections on the Dawning of Democracy*, promotes the power of the individual to effect positive change.

I first encountered Senator Graham when, in 1964, we were serving as executive assistants to ministers in the Pearson government, he to the Honourable Allan MacEachen and I to the Honourable Arthur Laing. Both those ministers eventually became senators. We knew Senator Graham then as "Big Al," and so he has remained; always working for Cape Breton, for the Liberal Party and for a tolerant and balanced world society based on the intrinsic value of the individual.

By any standard, Senator Graham has made an outsized contribution.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, it is very tempting on this occasion to touch on the many aspects of Senator Graham's most varied public life. However, I will limit myself to his days as Leader of the Government, which I wish to recall, particularly his ability to move controversial government legislation to a successful conclusion despite an opposition whose numbers were such that the government had to have all its supporters close by to forestall any laying of a procedural landmine by this side.

Senator Graham succeeded as well as he did because Al is, first and foremost, a traditional parliamentarian who recognizes that the proper functioning of the parliamentary system depends on both government and opposition respecting each other's roles and responsibilities. When one resorts to bullying, or the other to obstruction, the system can break down, sometimes resulting in mistrust which seriously hinders the working relationship that is so essential at the leadership level.

More than once when a Langevin Block-imposed deadline was approaching rapidly for a bill that was moving slowly, I could inevitably expect a gentle knock on the door, and Senator Graham would come into the office looking ever so distressed, walk in hunched over, sit down, cover his face and with agony in his voice say in a barely audible whisper, "John, I'm in a fix. What can I do to get out of it?"

Whatever impasse existed would inevitably be resolved because Al Graham went out of his way to accommodate a responsible opposition, no doubt on a number of occasions to the annoyance of an impatient Langevin and caucus. He would explain his dilemma in confidence, show understanding for the opposition's position, and together we were always able to come to a satisfactory solution. Ours was an excellent working relationship which has developed into a close friendship. While one ended too abruptly, the other continues unchanged.

Thank you, Al, and all best wishes for many active years of a well deserved — although even more regretted — retirement from this place. We will not be the same without you.

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

• (1340)

**Hon. Bill Rompkey (Deputy Leader of the Government):** Al Graham, how do I remember thee? Let me count the ways.

I remember being underground in the Phalen Mine on Cape Breton Island, our faces blackened with coal dust. I was not sure whether I was with Al Graham or Al Jolson. It is a good thing it was dark down there. We tried to get Al to wear a kilt. It was the only time in his life that he refused. Al was at home in that mine, at home in Cape Breton, at home alongside the men of the deep. This was his place. The only thing that would have made the place more perfect would have been to move the campus of St. FX next to the Phalen Mine. The best we could manage was to bring Phalen to the Senate.

I know that Al loves St. FX. It formed him, formed his liberalism, formed his powerful prose, formed his loyalty to and compassion for the little guy, always grounded in that healthy self-deprecating sense of humour. His greatest pride at St. FX was, of course, playing for the X-Men. He was, as he said, the fourth man on the third line. One year, he got two assists. It was the same year the goalie got four.

I remember Al as president of the party. He was there at one of the most fascinating and significant times in Canadian history and one of the powers behind Pierre Trudeau. Indeed, after the interregnum when the former Prime Minister returned from a brief retirement to once again lead the Liberal Party, Trudeau once said, "You can blame Al Graham for my being here." I remember those heady days before Christmas in 1979 when the caucus met to decide who should lead the party. The Atlantic caucus was unequivocal in its support of Trudeau's return, due in no small measure to the unrelenting persuasion of Al Graham.

Tirelessly, he criss-crossed Canada. If the back-breaking schedule had him in Yarmouth and Prince Albert in the same day, so be it. On every stage, he exhibited the same passion and eloquence that lifted people as few others could. Even though he was tired, he never missed those lighter moments. One year, his son David was driving a bus for Brewsters in Banff. Al, always the natty dresser, had a breastplate hanky in his suit coat, which the puckish younger Graham replaced before the evening rally with some ladies lingerie. As the rhetoric mounted and the beads appeared on his brow, Al reached into his pocket, where he thought the hanky was. Without missing a beat, he proceeded to mop his forehead with the frilly undergarment.

Perhaps what I remember best are those quiet chats, sometimes over a cup of tea — always with the milk in first — sometimes over something stronger. It was then that I realized what a full life this man has had, what special service he has given, on what foreign strands he has walked, and what wonderful and unique memories he has stored, always rooted in his beloved Cape Breton.

Al, from one Islander to another, let me offer you an Island toast: Long may your big jib draw.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, our colleague Senator Alasdair Graham has been a giant in these precincts where he has made a remarkable contribution, not only to Parliament but also to the larger common weal. No doubt his fortitude and wisdom was strongly informed by his boyhood experiences as he grew up in his hometown of Dominion, Cape Breton. To have had the opportunity to work with Senator Graham on a daily basis during his years as the deputy leader and then the Leader of the Government in the Senate was indeed a great privilege.

He was an artist at the use of what they call "usual channels" in the House of Lords, as we were often challenged to unravel the Gordian knots often tied by our colleagues from both sides of this chamber. As a teacher, journalist, democratic election observer and a senator, our colleague never forgot the values he learned at his alma mater, St. Francis Xavier University in Antigonish, Nova Scotia.

Honourable senators, in many ways the very motto of St. FX, *Quaecumque Sunt Vera* — whatsoever things are true — describes our friend. This motto comes from St. Paul, who speaks of a man being true in life, filling one's mind with everything that is true, everything that is noble, everything that is good and honourable. Indeed, this is Al Graham.

**Hon. Jane Cordy:** Honourable senators, I wish to pay tribute to my colleague and friend Senator Al Graham. When I taught school at St. Joseph's School in Sydney many years ago, there was a Graham student at almost every grade level. I see that some of his children and his grandchildren are here today as we honour their father.

In fact, Al, I see a lot of familiar Liberal faces from Nova Scotia here today, which shows you the high esteem in which you are held.

Al was very active in our church in Sydney. He and my mother served on the parish council together. He was also a lector in the church, and I remember that at Easter services every year he, Donnie MacIsaac and Connie Morrison would do the readings. They were all broadcasters, or a former broadcaster in Al's case.

In fact, I have a story about Al's radio career. As honourable senators know, Al grew up in Dominion, and he chummed around with the Scattalon brothers, all of whom were very athletic, like Al himself. One of the brothers went to St. Francis Xavier University and played every sport on campus. During his last year at St. FX, the university brought back the football program. Even though he had no football experience, Gino Scattalon tried out for the team and made it based on his sheer athleticism. At that time, Al was broadcasting the football games for CJFX Radio in Antigonish, which could be heard as far away as Glace Bay, Scattalon's hometown. It was the last game of the year and Scattalon was standing on the sidelines with no hope of ever getting into the game. He was getting embarrassed because he knew that his family and friends would be listening to the game back home.

Al decided that he would take matters into his own hands and save some face for his friend from home. Al started calling the game, inserting Scattalon's name every time a big play was made for St. FX. He could not have him score because it would be in the newspaper the next day, but he could make sure his friend looked good. "Scattalon runs for another 25 yards," Al would scream.

The game ended and Al went home feeling very proud of himself for what he had done — that is, until the bishop called him at home. The bishop just happened to be watching the game from his car, listening to Al's play-by-play. The bishop chastised Al, reminding him of the motto of St. FX: Whatsoever things are true.

Senator Al, I will miss all your political stories, but I will especially miss the wisdom and the guidance that you have given to Nova Scotia and Atlantic caucuses. I do hope that you can find some time to have another game of golf with Bob and me at one of the wonderful courses in Cape Breton. My best wishes to you.

**Hon. Lowell Murray:** Honourable senators, I believe I have known Senator Graham longer — going on a half century — and better than anyone here. I do not take that as a licence to poach on his privacy — or to endanger my own — since he will have the last word today. It is fair to say that we enjoy each other's company so much that we feel no need of any other audience for our recollected anecdotes, even when, as is his practice, he is recounting and embellishing them for the third or fourth time.

Today, his contribution to Parliament, to the Liberal Party, to the supervision of free elections abroad are being recalled, as they should be. With regard to the latter, I may say parenthetically that it is no surprise that he was so effective in identifying and preventing potential irregularities at the polls in some of those foreign countries. Anyone who grew up near Glace Bay would have heard of political tricks unheard of elsewhere — unlike New Waterford, where decorum was always more prevalent.

• (1350)

My earliest impression of Al Graham — and it is a lasting one — is that he was the exemplar of a good citizen. In the town of Antigonish, where he lived when I first knew him during the 1950s, he was the young man who could be counted on more than any other person of his generation to help in any worthy undertaking in the community. The list would be endless of good causes with which he unselfishly shared his time and to which he devoted his prodigious energy. His qualities of leadership, his talent for teamwork and his spirit of optimism that many later came to know from his work nationally and internationally were well known locally, long before politics and government became a major part of his life. In those days, he made time for others, even as the father of a large and growing family and while holding down two or three jobs to feed them.

That family, expanded now to include grandchildren, is well liked and much admired — and not just because they are strivers

and achievers but because their Graham and MacDonald genes have given them such a capacity for friendship and for service to others.

That gifted family has known more than its share of sadness and misfortune, and they have overcome. They have had good fortune too, among which is to have in Al Graham a father and grandfather who was there for them all.

Al Graham as patriarch — who would have thought!

**The Hon. the Speaker:** I regret to inform honourable senators that the extended time for Senators' Statements has expired, which is my signal to call on Senator Graham. I will, however, under Senators' Statements, continue with names.

**Hon. B. Alasdair Graham:** Your Honour, could the time be extended? I have wonderful things to say.

**The Hon. the Speaker:** I will continue with the list under Senators' Statements with Senators Fairbairn, LeBreton, Jaffer, Mercer, Prud'homme, Phalen, Maheu, Poulin, Day and Buchanan, as time allows.

**Senator Austin:** Honourable senators, I wonder if we could move to Senators' Statements and reserve the time for Senator Graham to respond to his tribute to the end of the Senators' Statements period. Would that be acceptable?

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It is agreed.

**Hon. Joyce Fairbairn:** Honourable senators, for several months I have been in a state of denial that a colleague so dear to my heart would be leaving the Senate, as his term was up. Alasdair Graham is ageless in spirit, mind and heart. It is inconceivable to me that he should be retiring so soon. We have known each other for many decades, beginning with his days as a valued assistant with our mutual friend and political living legend, the "Laird of Cape Breton," the Honourable Allan J. MacEachen.

Beginning in the early 1960s, Al lived through heady times as Mr. MacEachen shone in the positions of labour, and national health and welfare. It would be true to say that Alasdair Graham learned much.

As has been said, our colleague began as a teacher, schooled in Glace Bay and St. Francis Xavier University. He had a heady career as a writer and broadcaster, and later as an executive with the Cape Breton Development Corporation.

Through all of this, it was inevitable that he should learn that the core to meaningful life in politics began with the respect of people who were your friends and who were your neighbours. Al Graham never forgot that in all the years since.

I doubt there was anyone on Parliament Hill who applauded more passionately than Senator Graham when yesterday's budget finally addressed one of his greatest causes — cleaning up the Sydney tar ponds, for which he has fought hard for so many years.

Prime Minister Trudeau made a great choice when he appointed Al Graham to the Senate on April 27, 1972. Three years later, he became the president of the Liberal Party of Canada, and has been involved ever since, through hair-raising election campaigns on the ground, and in the air travelling to every corner of Canada — not just making friends for the party, but also spreading the word about the value of this chamber and those who serve in it.

Al has also made significant contributions for all of us, and our country, in his extended work internationally, spreading principles of democracy in other countries.

Honourable senators, I admired Al Graham tremendously through all those years, but words cannot express my gratitude for his help and his energy as deputy leader when I was Leader of the Government after 1993. Those were days when management of this chamber took on an entire new meaning for our new government, which was in the position of an extremely small minority. In those days, we could not win votes, so we had to negotiate our way along an often difficult path. Thanks to the spirit, generosity and terrific good humour of Al Graham, more often than not we were able to find common ground with our friends on the other side of the house.

I will miss you, Al, and your laughter and your strength. I wish you nothing but good fortune and happiness with your great family, whom you adore. You will be forever remembered here with respect and affection. I know whatever course you take will not be far away from your country or your Liberal family.

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

**Hon. Marjory LeBreton:** Honourable senators, I do not have prepared notes, but I should like to stand and pay tribute to Senator Al Graham, who is a great Canadian and a wonderful human being. Honourable senators will understand, for obvious reasons, that I can not speak with any great detail about his Liberal credentials, as I am not knowledgeable on that front.

However, I do have a personal connection with Senator Graham. When I first was named to the Senate, we started to refer to each other as “cuz.” He would say, “Hi, cuz,” as would I, to the horror of the partisans on our respective sides. One day, someone asked in the Reading Room, “You’re cousins?” We said, “No, not exactly.”

My cousin, George Barrett, who is in the gallery today, went to St. Francis Xavier University, where he met a young woman by the name of Eileen Graham, whom he married. The Barretts have three wonderful children, who I think I see up there as well. As a

result of that marriage, Senator Graham and I made ourselves honorary cousins.

Honourable senators, I remember the day Senator Graham was appointed to the Senate, because I was working for the Honourable Robert Lorne Stanfield. Mr. Stanfield, being the great Nova Scotia gentlemen that he was, paid great tribute to Al Graham. I was so taken aback by these glowing words that I ran to get Al Graham's biography, just to confirm that he was a Liberal, not a Conservative.

I have followed Senator Graham's life through family and through politics for a long, long time. One of the more memorable times to me happened in August 1979. We were the government; Joe Clark was the Prime Minister. The Right Honourable John G. Diefenbaker had the good sense to pass away while we were in government so that we could give him a proper state funeral. We had arranged the entire funeral. Those honourable senators who were around at the time of Diefenbaker will remember that there was a bit of feuding over him in the party, from time to time. Senator Murray could attest to this.

It was decided that the state funeral should be held at Christ Church Cathedral, following which Diefenbaker's body would be moved to Saskatoon for burial. Al Graham was designated the representative of the Liberal Party of Canada on the train. It was a most interesting experience. Because of the feuding on the various sides of the Diefenbaker faction, Al Graham was the only person on that train whom everyone could speak to with some civility. We have had many good laughs about that since.

I should like to say two things. In 1996, when my daughter and grandson were killed, Al Graham was one of the first patrons of the LeBreton-Holmes Memorial Scholarship at the University of Ottawa, a position that he had to give up when named a member of cabinet as the Leader of the Government in the Senate.

• (1400)

The other thing I wanted to say to him, in addition to extending my own personal best wishes — and he really does not have to leave here until May 21 — if he could speak to his colleagues and say, “Don't call an election,” because we could use him around here for another couple of months.

This morning, I was speaking with my former dear leader, the Right Honourable Brian Mulroney. After subjecting me to 15 minutes of St. FX stories and events that happened there, he asked me to personally express his sincere admiration for Senator Al Graham and wish him all the best, to which I add my own good wishes for the future.

**Hon. Mobina S. B. Jaffer:** Honourable senators, before I had the privilege to be in this chamber, Senator Graham, Senator Hays and I went to Holland for a Liberal International meeting. Senator Hays and I were very impressed by Senator Graham's absolute commitment to the cause of liberalism and democracy.

[ Senator Fairbairn ]

Later, with Senator Graham and his son Jack, Senator Mercer, Senator Smith and Senator Hays, we went to Oxford University, where Senator Graham gave a barn-burning speech to a large group of Liberal Democrats from all over the world. I got teased a lot by my colleagues who said that perhaps he could come and speak in British Columbia and we might win more seats there.

Senator Graham, since I came to this house, I have observed the quiet counsel you give to all of us and the care with which you speak. You, senator, have given a lot to our country and we thank you for this. I want you to know that when you leave this place, you leave a lot of friends, as well as a legacy of quiet advice you have given to many of us. We will miss you, but we will know that you are always available to us. Thank you for all that you have done for our country. You have been a great example to us.

**Hon. Terry M. Mercer:** Honourable senators, I do believe that upon retirement my friend and colleague, the Honourable Senator Alasdair Graham, will be the third-longest-serving senator in Canadian history, behind Senators Lawson and Sparrow.

From the beautiful little town of Dominion on Cape Breton Island, Al Graham emerged as one of the country's most respected politicians. I would not even attempt to inform this place of his many accomplishments, as others have done so already. It would take me over a week, and we all have a party to go to tonight so we would not finish. I do wish to tell one story, though.

Do not worry, Senator Al, it is not in the same vein as Senator Rompkey's; it is a little cleaner.

During a by-election in Central Nova, I was part of the campaign team running against Brian Mulroney in 1983. We held an event to rally the troops in a little place called Plymouth, Pictou County, and our guest speaker cancelled at the last minute. I thought for a moment about whom I could get to replace him. I made a phone call at 4 p.m. to the cottage in Antigonish and Al agreed to be there. Not only did he show up on time, but one would have thought that his speech had been designed specifically for the event. He brought the room to its feet, encouraged everyone to work hard, and gave them the hope — false hope, unfortunately — that they could win the election.

I tell this story because it points to one clear fact: Senator Al does what any senator should do. He has always been friendly and supportive; he has always been available whenever needed; and, most important, he has always strived to make his home of Nova Scotia and Canada the best place in the world in which to live and work.

Al has served his party with dignity and loyalty. As president of the Nova Scotia Liberal Party from 1973 to 1975 and the Liberal Party of Canada from 1975 to 1980, the party was modernized and invigorated under his leadership.

When the party was shut out in Nova Scotia in the 1997 federal election, Senator Al became the Leader of the Government in the Senate, as well as the regional minister for Nova Scotia. He helped to rebuild Liberal fortune, culminating in the return of four Liberal MPs to the other place in 2000. This again shows the strength of his effectiveness and his hard work.

Senator Al, my wife Ellen and I, and all your fellow Nova Scotians and fellow Liberals, extend our heartfelt congratulations to you on your retirement this coming May. I hope that all honourable senators will look to your record of achievement and commitment as a model of how we should strive for the betterment of all Canadians.

**Hon. Marcel Prud'homme:** Honourable senators, believe it or not, I will be brief. I want to share with you something unique that happened in my youth — my youth as a parliamentarian.

One day, a very brilliant person in the Prime Minister's Office was pushing our caucus to make the rainmaker, better known as Senator Davey, president of the Liberal Party of Canada. I thought it was wrong to give too much power to the same person. I went to see Al Graham and said, "Sir, we do not know each other very well but I want you to run." However, he said, "Marcel, I am not very knowledgeable of the French language." I told him, "Don't worry, just say bonjour, merci and smile." I said the same to Iona Campagnolo. Finally, our friend Mr. Davey did not run and Al became our president.

I want him to know that I have always been very lucky because I supported and worked actively for every president of the Liberal Party. I am very glad to be an independent senator, because if I were still a Liberal, I would not have worked for Mr. LeDrew. I want this to be very clear.

Having said that, now that Senator Graham has more time, I want him to know that I will become very involved in Liberal International, and I ask him to be my godfather as I work in the circle of these very influential people.

Senator Graham, I salute your wife, whom I know, and all your children, and wish you a lot of success in International Liberal activities.

**Hon. Gerard A. Phalen:** Honourable senators, I would like to pay tribute to a fellow Nova Scotian, the Honourable Alasdair Graham. His story is linked inextricably to Cape Breton. To be from Cape Breton is to have known hard times, but also to have known a tremendous sense of family and community values, passed down through generations of Cape Bretoners. Born to Dr. John and Genevieve Graham in Dominion, Nova Scotia, a very tight-knit community on Cape Breton Island, Al Graham would travel down that road, but as many of us from Cape Breton have found as well, he would not be unprepared for such a journey.

The first stop on those travels was St. Francis Xavier University, with post-graduate studies in English and education. At St. FX, Senator Graham would be introduced to Moses Coady and the Antigonish Movement, whose teachings empowered individuals through cooperation and education, providing hope to those who had none. These teachings would prove to be a seminal moment in his life and would serve him well through the course of his life and career.

In 1958, politics beckoned and with this call came a run at a seat in Antigonish, where Senator Graham holds the unique distinction of losing two seats in the 1958 election, which may take a bit of explanation. Senator Graham ran in Antigonish and Allan MacEachen ran in Inverness. At that time, Allan MacEachen had 25 votes attending St. FX University, and one could vote in either riding. Allan MacEachen graciously agreed to give the 25 votes to Al Graham. Al Graham lost by 981 and Allan MacEachen lost by 18. This is a feat that to my knowledge remains unequalled in Canadian politics.

Political life beckoned once again as a special assistant to the Minister of Labour and, subsequently, the Minister of Health, the Honourable Allan J. MacEachen. This would be the start of a relationship that would continue for 40 years.

The second employee on the ground with the Cape Breton Development Corporation, as the executive vice-president, Al Graham would work long hours in attempting to right the economic ship in Cape Breton.

Summoned to the Senate in 1972 by the Right Honourable Pierre Elliott Trudeau, Senator Graham would become president of the Liberal Party of Canada during the Trudeau years. This chamber provided Senator Graham with the opportunity to pursue his passion — the spreading of values of democracy and equality throughout the world, with such organizations as Liberal International and the National Democratic Institute. I should like to quote from the man himself to explain this dedication that has touched so many lives. I quote from his book, *The Seeds of Freedom: Personal Reflections on the Dawning of Democracy*:

Over the past decade, I have watched little people struggle for democracy, an ideal which promised a better life for themselves and their families. Like my own people in Cape Breton they were beset by powerful forces which could only be controlled if they became masters in their own house.

• (1410)

To conclude, honourable senators, I would like to offer my heartfelt congratulations to Senator Graham for his dedication to bettering the lives of the people of Cape Breton, Canada and beyond. Al, you have done us proud.

**The Hon. the Speaker:** Honourable senators, I regret that time for both tributes and Senators' Statements has expired.

[ Senator Phalen ]

**Senator Graham:** Honourable senators and dear colleagues, I want to begin by thanking all of those who were so generous in their thoughts, expressions and reminiscences, which brought home to me so many wonderful memories. I noticed that Senator Buchanan was about to get to his feet when the Speaker brought down the gavel. I know that John would be very kind, but it is probably just as well that I got on before he did because we would be ordering supper for everybody here and in the gallery.

I have very mixed emotions today. This is far too early to be leaving my friends in this wonderful institution. Although I will not read all the names, the class of 2004 comprises a mighty powerful and very distinguished list of honourable senators who have retired, or who will retire, from this chamber during the year. I want to acknowledge the presence of my rather extended family who came here, I am sure, at great inconvenience and at their own expense. I particularly want to acknowledge one family member: MacKenzie Graham, Jack's son. Today is his ninth birthday.

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

**Senator Graham:** I want to thank the people who have made this wonderful Senate — this great institution — my second home and family. They include all honourable senators, the staff at the Clerks' Table and in the Black Rod's office, the translators, the interpreters, the Hansard reporters, the staff of journals, debates and printing, the legislative clerks, and those who try to translate my fractured French. I thank the people in communications, human resources and committees branch; the great security staff, who are so courteous; the bus drivers, with whom I have so much fun; the cafeteria staff; the messengers and the cleaners. No matter with whom one communicates in this place, this wonderful family are all exemplary servants, workers and wonderful Canadians.

Yes, Jane, I do remember the day I "put" Gino in the line-up but could not let him score because it would have shown up in Monday's *Chronicle-Herald* that he had not scored in that football game. By the way, that was neither the first nor the last time I did that.

As I listened to your generous tributes, I reflected on the many years I have been privileged to serve in this beautiful chamber. I thought of the eight wonderful oil paintings commissioned by Lord Beaverbrook as part of the Canadian War Memorials Fund that, so magnificently restored, watch over our work every day. Perhaps we often forget their presence because they seem so at home in this place.

[Translation]

Yet, these paintings are a constant reminder of a lost generation, the high price of freedom and democracy, and the importance of paying tribute to those who have kept the faith and protected this wonderful country of ours.



[English]

As these walls whisper with the sacrifice and invincible determination of those brave Canadians far from home so long ago, we think about the centuries-long sowing of the Canadian identity: How a gutsy and resilient people — our ancestors — defied all the odds, imagining a land of opportunity built on the principles of reform and social justice and the commitment to a better world. We think about a democracy where the accommodation of differences was the rule, not the exception; an accommodation so subtle it is as natural as the air we breathe, and so we remember.

We remember our national soul. We recall that the very foundations of our country were grounded in the values of moderation and compassion, of tolerance and inclusion. These values were all part of the seeds from which this nation grew at its origins. As generation after generation journeyed here from around the world and all corners of the globe — many of them poor, dispossessed, hungry, and too many fleeing oppression — they did so because the spirit of this wonderful young country cast a light that projected far beyond the gateway to freedom.

• (1420)

Yes, we do remember and, honourable senators, we must take great pride in our work in this chamber as we do so. Our work is about the defence of the values that the young people, and some a little older, that you see in the Beaverbrook paintings sacrificed and died for — and, later, all of those who fell at Normandy and Dieppe, and in Korea. These are the values that generation after generation of Canadians sang about and wrote about and passed on to their children.

Today, in this generation, these are the values that Canada brings to cyberspace and to international business, to international affairs, to the protection of the environment, to the corridors of the United Nations, to trouble spots like Bosnia, Afghanistan and Haiti. Our work, honourable senators, is about the defence of the values that have made our flag loved and respected across the planet.

A great Canadian, and a great friend of mine, by the name of Senator John Connolly, once leader of the government in the Senate, who sat where Senator Austin is sitting today, very accurately described this place as the custodian of our basic rights, our basic freedoms. As someone who has had the privilege of serving my province of Nova Scotia and my country for over 30 years in this chamber, I have had a very enviable opportunity to serve in this remarkable assembly of very talented people from all walks of life. All of those — all of you — who have been called to serve in what is truly the workshop of government. You have been my working colleagues; all of you have become my trusted friends.

The special custodianship that Senator Connolly spoke of is often not well understood by Canadians, and yet, in this place where our most valuable work is often done in committee — our hearings on bills and examination of issues of great importance to

the lives of all Canadians, let us never forget that — senators work long hours to ensure that our laws are crafted to safeguard the peace, the security, the basic rights and freedoms of our talented people, no matter where they live, no matter what their circumstances. We are here in this chamber to protect regional, provincial and minority interests. We are here to focus greater public attention on those people in society whose rights and interests are often overlooked — the young, the poor, the elderly, the dying, our veterans and our wonderful Aboriginal friends.

[Translation]

Every study carried out in this place has helped to improve some specific aspect of our society.

[English]

Of the many studies which have had their birth in our chamber and in our committees, and which have had a profound, beneficial influence on the lives of countless Canadians, I want to refer to just one particular study. I have in my hand a clipping from the *Toronto Star* of 1969. This hangs on the wall of my office. The headline is, “How Tish Graham in grade 11 made war on poverty” and under the picture of Patricia and Senator Croll it says, “Tish Graham’s poverty report made Senator David Croll weep.” Let me read a couple of paragraphs:

Forty-one students from a Sydney, N.S. high school got together one day during a history class and decided that a study of the French Revolution was about as relevant to their time and province as the sale of buggy whips is to a General Motors executive.

When teacher William MacKenzie asked the middle-class kids —

Remember, you are all middle class.

— in Grade 11A of Sydney Academy just what was important, they pointed out the futility of studying about the problems of another time —

I do not believe that, but oh, well.

— while all around them they could see people bent by misery and squalor.

MacKenzie, a flexible man, told the students that if they were so concerned about social conditions in Cape Breton, why didn’t they conduct a study of these problems as a class project. The students not only agreed — class leader, Tish Graham, 15, suggested that the results be taken to the federal government as an indictment of its failure to wipe out local poverty. Tish pointed out that Senator David Croll, a lifetime fighter for social reform, would be in Halifax in two weeks to hold hearings by a Senate committee on poverty, which would give them an ideal opportunity to present their findings.

The 41 students then went on a blitz of research. They talked with poor families, with miners, with steel workers. By the second day they politely asked teacher Bill MacKenzie to step aside as the class spent busy nights and whole weekends speedily preparing the report before Croll's arrival in early November.

Many of the interviews were done with the poor themselves....

Finally, the students dipped into class funds for \$270 to charter a bus to take them to Halifax....

They presented 31 specific recommendations to the committee.

When Tish Graham stood up to read the report to Senator Croll, the man wept openly — for pride, he said, at the dedication of this group of young Canadians.

Tish had read in part:

'The war on poverty should be a hot and furious war ... It is the responsibility of the middle class to see the lot of the poor people improved.

We need a just society, but it must be just for all.'

Enough said on that particular subject.

Honourable senators, in a survey I read a few years ago, most kids interviewed in Canada thought that Thomas Jefferson was a great Canadian hero. It does not take a great stretch of the imagination to see that the same tragic lack of information and understanding about the history of our institutions and the evolution of our bicameral system lies at the heart of the often misplaced commentary with respect to the value of the Senate in this country. None of our parliamentary institutions is perfect. Any reform of the Senate must be viewed in the total context of parliamentary reform, because change in one chamber most assuredly affects the other. Change must respect our parliamentary institutions.

• (1430)

Honourable senators, we stand at a watershed in our history. Senate reform is a subject of great intense and passionate national debate, but so too is the subject of reform of Parliament per se. Canadians want and expect a new partnership with a reformed Parliament, a new partnership that will nurture a political culture in which people have the heart for what is right, the spirit for what is just and minds dedicated to the public good.

Honourable senators, let the debate begin in a spirit of open-mindedness and tolerance, with our energy steeped in respect for the views of all parties and all parliamentarians, mindful always that our first duty is to serve the people and that it is our great privilege to work for the deepening of our democracy and the enriching of what is one of the finest civil societies on the face of the earth. In the course of that debate, let us engage fully in a process of education and reflection so that, years from now, Canadians, parliamentarians and historians in the future will be able to say, no matter what happens, that we did the right thing at the right time and that we did it together.

Let the words of the Magna Carta, written in the 13th century, serve as our anchor:

To none will we sell, to no one deny or delay right or justice.

These are words that countries over many centuries have espoused. Those words remain as true today as they did when they were written so long ago. We will not trade on or sell justice to the highest bidder. We will not deny or delay right or justice. That is the pledge to the people of our country. That is our pledge to our children and to our children's children and to all the generations yet to come.

There is a well-known inscription on a plaque in the legislative chamber in Charlottetown. The words are from Milton's *Paradise Lost*. It reads: Providence being their guide, they builded better than they knew.

Honourable senators, we have not built this great country by accident or by luck or by circumstance. Our ancestors, deliberately and strategically, entered into a social compact reflective of our collective will to create something new here in this vast and breathtakingly beautiful northern expanse of territory. As I contemplate my far too early retirement from this chamber in May of this year, I reflect upon the fact that, when you really think about it, we did build much better than we probably knew or understood in times past. So, too, will we build higher and stronger in the future — probably much better than we will understand in times to come, guided by providence and the Canadian instinct for justice and for what is right. If that is to be the legacy of Parliament to future generations of this wonderful, magnificent land of ours, Canada, our beloved Canada, will always remain glorious in perpetuity and eternally free.

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

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw to your attention the presence in our gallery of Mr. Jelko Kacin, Chairman of the Committee on Foreign Policy of the National Assembly of Slovenia. He is accompanied by the Slovenian ambassador to Canada. Welcome to the Senate of Canada.

[Translation]

I also wish to draw to your attention the presence of the winners of the 2003-04 Senator Jean-Robert Gauthier Essay Contest. There were a total of 95 entries.

The four winners are Rebecca Laurin, Juliana Martel and Christian Paquette, all of the University of Ottawa, and Sébastien Gougeon, of the Université du Québec à Montréal.

Welcome to the Senate.

[English]

• (1440)

[English]

## ROUTINE PROCEEDINGS

### BUDGET 2004

#### DOCUMENTS TABLED

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, pursuant to rule 28(3), I have the honour to table, in both official languages, certain documents relating to the Budget 2004, which was presented yesterday in the House of Commons. They are: notice of a ways and means motion to amend the Air Travellers Security Charge Act, notice of a ways and means motion to amend the Income Tax Act, the Excise Tax Act, and the Income Tax Conventions Interpretation Act; as well as the budget speech, the Budget in Brief and the Budget Plan 2004.

[Translation]

### CUSTOMS TARIFF

#### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons returning Bill C-21, to amend the Customs Tariff.

Bill read first time.

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

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

### NATIONAL SECURITY AND DEFENCE

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

**Hon. Joseph A. Day:** Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on National Security and Defence have power to sit at 5 p.m. on Monday next, March 29, 2004, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

### ABORIGINAL PEOPLES

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY 2004-05 BUDGETED EXPENDITURES FOR COMMUNAL PROGRAMS AND SERVICES DELIVERED BY DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

**Hon. Nick G. Sibbeston:** Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report upon planned federal expenditures, as set out in the 2004-05 Main Estimates and the March 2004 federal budget, in relation to programs and services delivered to First Nation communities by the Department of Indian Affairs and Northern Development; and

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

### HISTORICAL ROLE OF WOMEN IN THE SENATE AND CHALLENGES FACING WOMEN LEGISLATORS TO ADVANCE PEACE AND HUMAN SECURITY

#### NOTICE OF INQUIRY

**Hon. Douglas Roche:** Honourable senators, I give notice that, on Tuesday, March 30, 2004, I will call the attention of the Senate to the historical role of women in the Canadian Senate and the challenges faced by modern women legislators to advance peace and human security, and I invite all the women senators here to come and hear this speech.

### OFFICIAL LANGUAGES

#### BILINGUAL STATUS OF OTTAWA— PRESENTATION OF PETITION

**Hon. Mira Spivak:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions 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 the government of Canada;

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

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

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

## QUESTION PERIOD

### PRIME MINISTER'S OFFICE

#### NATIONAL UNITY RESERVE FUND

**Hon. Marjory LeBreton:** Honourable senators, until the Minister of Finance voiced the words “national unity reserve” in yesterday’s budget speech, few outside of the Liberal Party knew that the Prime Minister controlled a secret \$40-million slush fund to pay for special projects presented by Liberal MPs.

This fund apparently has been around since 1996. It appears nowhere in the accounts of Canada.

Can the Leader of the Government in the Senate tell us whether the Prime Minister, when he was the Minister of Finance, knew that this secret national unity reserve fund was available to fund projects of Liberal MPs? If so, why did he not expose it then rather than now? Is this yet another example of Paul Martin turning a blind eye to the excesses of the former government, putting his own career ahead of principle?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the Prime Minister was not aware of a fund called the national unity reserve until the time he became Prime Minister, and that fund has in no way been used by Prime Minister Martin.

**Senator Comeau:** What a great Finance Minister!

**Senator LeBreton:** That is not exactly what I asked. What the government leader is saying is that the Prime Minister knew about it — if he did not know about it before, he knew about it on December 12.

Honourable senators, following yesterday’s budget, no one from the government could say when the fund was created, who created it, what its prime objectives were, how much money was spent, and where and for what the money was spent.

For example, since it was called the national unity reserve, was this money used as a tool to combat nationalist sentiments in the province of Quebec?

**Senator Austin:** Honourable senators, I do not have very much information with respect to this fund, but it was reported to me that one of its purposes was to fund Katimavik, the project sponsored by our former colleague Senator Jacques Hébert.

**Senator LeBreton:** All we know about the reserve fund, honourable senators, is what one senior government official is quoted as saying — “It was a honey pot.”

Could the Leader of the Government in the Senate now advise the Senate — if not, can he find this information for us — when the fund was created, who created it, and where the money was spent? He talked about one of its prime objectives. We are well aware of Katimavik and how Senator Hébert starved himself on a bench out in front of the Senate — which did not do the Senate’s image any good, I might add.

The government leader will obviously also have to find a lot of other information. When we checked, there was nothing under the rubric “national unity reserve,” in either the published or unpublished volumes of the Public Accounts of Canada or in the estimates of Canadian Heritage. Therefore, in addition, could the Leader of the Government in the Senate advise the Senate as to where exactly in the public accounts the monies were paid out for this fund, and where in the estimates was it voted this money?

**Senator Austin:** Honourable senators, I shall certainly make inquiries and a best effort to provide the information requested by Senator LeBreton.

However, I want to express a very aggressive disagreement with the honourable senator in her reference to Senator Hébert. I thought he made a very substantial public policy and public interest contribution by his insistence on a program that I think has very considerable value.

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

**Senator LeBreton:** Honourable senators, there are many ways to register objections. One does not need to use a national institution like the Senate to make a statement — that is, lying on a bench starving oneself.

The Prime Minister has promised to release documents pertaining to the sponsorship fund, but media reports today suggest that this openness will not extend to the national unity reserve fund. Why is the Prime Minister not willing to provide all relevant documents about this \$40-million-a-year fund, and will the Leader of the Government in the Senate undertake to table in the Senate a complete list of all projects funded through this secret fund in order to convince us all that the government does not have anything to hide?

**Senator Austin:** Honourable senators, I do not have much to add to my previous answer, which is that I shall make inquiries and a best effort in an endeavour to answer Senator LeBreton’s questions.

**Hon. Gerry St. Germain:** May I have a supplementary question, please?

Honourable senators, my question is to the Leader of the Government in the Senate. Did I hear him say that the former Minister of Finance, former vice chair of the Treasury Board, former senior political minister in the province of Quebec did not know that there was a \$40-million-a-year slush fund, for the discretion of Liberals only? What a shameful, shameful situation that is in itself.

Is the government leader asking us to believe that? Does he think we are stupid over here? I am sure he does, but good Lord, we are not that bad, my man! To think that he would —

**The Hon. the Speaker:** Order, please. Your question, Senator St. Germain.

**Senator St. Germain:** Honourable senators, did I hear the Leader of the Government in the Senate say that the Prime Minister said that he did not know this fund existed? Is that really the level of the Prime Minister's incompetence?

**Senator Austin:** Honourable senators, I always enjoy the sound-and-light show from Senator St. Germain. It rivals the one on Parliament Hill in the evenings.

What I am saying is that this fund was not within the awareness of the Prime Minister when he was Minister of Finance, and certainly not when he was not in the ministry.

• (1450)

Honourable senators, the question suggests that there is some misadventure, misstep or something wrong, to put it in simple terms, with the existence of a fund that might be directed by a prime minister. I reject that allegation on the face of it. If the fund has been misused in some way, and we have no evidence of that, then there might be a basis to some allegation. However, I will add to Senator LeBreton's question a more historic search to see whether such funds might have been available to prime ministers in previous administrations.

## FINANCE

### THE BUDGET—SETTING OF EMPLOYMENT INSURANCE PREMIUMS

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. Since 2002, the cabinet rather than the independent EI commissioner has set EI premiums. The official reason is that the government wanted to study the way that EI rates are set, but the truth is that to keep overcharging workers they had to override the law.

The most recent budget tells us that based on consultations held last year, the government may or may not bring in legislation in time for there to be a new rate-setting mechanism for next year. If they do not bring in this legislation, then cabinet will be given the power yet again to set premiums for the coming year.

The rate set in last year's budget for this year was \$1.98 per \$100 of employee earnings, which was supposed to

cover the cost of the program this year. If this is a break-even rate, could the Leader of the Government in the Senate explain why the EI actuary concluded in an independent report this past December that over the course of the 2004 calendar year the EI surplus would climb by another \$1.5 billion to hit \$47 billion by the end of this year?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I will make inquiries and hopefully provide the honourable senator with a fulsome answer at a very early time.

**Senator Oliver:** The budget also assumes a \$1.98 premium for next year and calls it a break-even rate. There is \$47 billion in the EI account but rates are not going down any further. Can the Leader of the Government in the Senate confirm that this projected break-even rate is not based on any independent analysis but is the handy work of some people in the Department of Finance who have consistently underestimated the government's tax haul in the name of prudence?

**Senator Austin:** I will add that question to my inquiry, honourable senators.

### THE BUDGET— FORECAST FOR EQUALIZATION PAYMENTS

**Hon. Gerald J. Comeau:** Honourable senators, I have been listening to the spin on the budget since yesterday. I point out that the spin is not applicable to the recipient provinces of the equalization program.

A year ago, the government planned to send the provinces and territories \$13.4 billion for equalization and territorial financing. The fall economic and fiscal update cut this amount back to \$11 billion because of the new census numbers and the downturn in the Ontario economy. This was \$2 billion clawed back from the benefits already paid. We are now being told that the figure is being reduced to \$8.7 billion this year, almost \$5 billion less than what was promised a year ago. The provinces will have to pay back a further \$2.5 billion because of this.

Could the Leader of the Government in the Senate explain how it is possible for the Department of Finance to make a \$4.7 billion mistake in its forecast for this year's equalization payments, a third of what was originally budgeted? Has the government considered what the impact will be on health care, education and the waiting lines for medical services in our hospitals which are already way too long?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the question of equalization payments is a current one at the federal-provincial first ministers' level.

Honourable senators know that there is legislation before this chamber at this time to extend the existing agreement by an additional year. This is to permit the continuation of ongoing discussions about the nature of the formula and what results are produced by the formula in terms of transfers to various provinces.

Honourable senators are also very familiar with the way in which the equalization formula works. It is based essentially at the moment on the performance of the Ontario economy. That is the largest factor in the current formula. As the Ontario economy has declined, the formula works to reduce, regrettably, the transfer payments for which various provinces, including my own, British Columbia, are eligible.

In specific terms, I want to respond to that part of Senator Comeau's question that relates to "passed over" payments that are now the subject of negotiations with provinces where the federal government seeks to recover over several years, not in one year, excess payments that were made by virtue of an error in the calculation of the formula.

The subject of equalization is part of the infrastructure of Canada. How it will work in detail depends on many factors, with various provinces now submitting different forms of calculating different levels of wealth. I believe that this is a subject on which we will hear a great deal for some time to come.

#### THE BUDGET— CLAWBACK OF OFFSHORE RESOURCE REVENUES

**Hon. Gerald J. Comeau:** On a supplementary note, the budget explanation does give an indication as to where we might be going. Obviously, it is not the end of the new formula. It is not currently all outlined, but it appears as if we are heading into a new equalization formula that is almost comparable to the old one, judging from what I have read. The budget does not fix or does not intend to fix the clawback of offshore resource revenues; rather, it promises to look at the national revenue base for the next set of amendments that will take place in 2009, some five years down the road. This seems to be another Red Book promise to take us over the election period so that we can go back to things as they were.

Why does the government continue to drag its heels on substantive changes to the clawback of offshore resource revenues that would benefit Nova Scotia and Newfoundland immensely, and Atlantic Canada overall, and provide the means by which they could become revenue-producing provinces rather than revenue-receiving provinces?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the Minister of Finance has tabled equalization renewal measures with the 2004 budget that include an additional \$175 million in cash enrichments beyond the package that was discussed by provincial finance ministers with the federal finance minister on February 20, 2004.

The question relates to one of the most difficult parts of the negotiations between the federal government and the provinces. As Senator Comeau well knows, the equalization formula is designed to transfer funds from the federal government that have been the basis of contribution by provinces that are not eligible for equalization. They are above the equalization level. The formula was to take into account the earnings of all provinces, and part of those earnings deal with offshore revenues.

In addition, I understand very well that some of the provinces have made submissions saying that the revenues in the formula

that go to the federal government should be retained by the provinces as well, without amending the equalization formula. It would be money on top of their equalization eligibility. This would add to the burden of those provinces that are above the table. This is what the negotiations are all about.

• (1500)

I appreciate the fact that Senator Comeau has put these issues on the record in the Senate.

#### THE BUDGET— CLAWBACK OF OFFSHORE RESOURCE REVENUES

**Hon. Gerald J. Comeau:** Honourable senators, I do not know whether what the minister has said concerning those provinces which have revenues from non-renewable resources is entirely fair. Eventually, those revenues will run out. Without cutting back the transfers, those provinces are proposing that the clawback be reduced until such time as those revenues bring those provinces up to have status. At that point, they would be more than glad to provide funds for equalization payments to those provinces that are not as well off as Newfoundland and Nova Scotia. That is what is being proposed by those provinces; not the characterization which the minister is trying to portray, that these provinces want to have their cake and eat it too. They actually want to propose a method by which they will become revenue-producing provinces, thus contributing to the rest of Canada. At the end of the day, that is the goal of all provinces.

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I am appreciative of that comment by Senator Comeau. I think more will be learned as the weeks go by.

#### AGRICULTURE AND AGRI-FOOD

##### GENETICALLY MODIFIED GRAINS— MANDATORY LABELLING

**Hon. Mira Spivak:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I do not expect that he will be able to give me an answer today.

Organizations of the radical middle, such as Greenpeace, the National Farmers Union, the Saskatchewan Organic Directorate and the Canadian Organic Growers, are starting an advertising campaign in which they state that the greatest threat to wheat farming is not hail or drought but Roundup-ready wheat. They are not alone in their concern. Yesterday, the Canadian Wheat Board released information showing that 87 per cent of Canada's wheat customers, especially Japan, now require guarantees that they are not receiving genetically modified wheat.

As well, a poll conducted by Decima Research Inc. for Greenpeace in March 2003 showed that 60 per cent of Canadians would avoid products made with GM wheat. Over 90 per cent of Canadians polled have stated consistently that they want labels on food containing GM ingredients.

Since we know that Monsanto will most likely not change its mind, what is the government's policy on genetically modified wheat at this stage? Has the government come to some conclusion about what they will do about this particular issue?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I cannot address specifically the question that Senator Spivak raises. However, in a general way, I should like to reflect that the customer decides what the producer grows because the market is golden. If the market does not want genetically modified wheat, I am fairly sure that the customer will get the kind of wheat it wants.

**Senator Spivak:** With respect, the Leader of the Government may be underestimating the power of the lobbying that Monsanto conducts. I have been through it with other products. However, I take the minister's comment as hopeful.

I would like to know what the situation is. I know there was movement toward voluntary labelling. Has the government changed its mind in terms of mandatory labelling of genetically modified products? Is there sufficient research and data to consider what damage genetically modified grains might be doing to organic farmers? In the United States, as people become more health conscious, the market for organic products is growing by approximately 30 per cent per year.

**Senator Austin:** Certainly, I will endeavour to get that information for the Honourable Senator Spivak.

It appears to me that this would be an excellent subject for an inquiry in this chamber. The honourable senator might consider initiating such an inquiry.

While I am on my feet, I might say that the silence on the opposition side in questioning the government's announcement in Picture Butte about aid to the agriculture industry in the amount of \$995 million must mean that they agree that these policies are desirable.

**Senator Lynch-Staunton:** Six months too late!

#### CANADIAN WHEAT BOARD— DISPARITIES IN PRICE OF WHEAT

**Hon. Leonard J. Gustafson:** Honourable senators, I was about to rise and congratulate the government on its announcement. The Senate Agriculture Committee and the committee in the other place work very well together. The battle is not won. The battle will not be won until the border is open.

On that count, I want to say that I had the privilege of travelling to Washington with Senator Grafstein, who knows everybody there. When he walks through a door, he does not take no for an answer. More of those kinds of representations should be made by members on both sides of the house. We hope that the border will be opened shortly.

However, that is not the subject of my question today. I did considerable research on the question that I wish to ask today. This morning, in Crosby, North Dakota, at nine o'clock

Saskatchewan time, a bushel of wheat sold for \$5.66 Canadian. Weyburn Inland Terminal, with an interim advance, is selling a bushel of wheat for \$3.46 Canadian. Given the problems that we have on the Prairies and the difficulty farmers are facing, we cannot sustain this kind of disparity with the input costs that we have. It has been said that you should never ask a question to which you do not know the answer. Honourable senators, I will do just that.

Can the Leader of the Government give us any indication as to why this situation exists, and what can be done about it?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, obviously, I do not have any information at hand to give to the honourable senator on this question. I will make inquiries. I certainly have had the understanding that Canadian wheat growers had open and competitive access to the U.S. market. The U.S. has tested the role of the Canadian Wheat Board and it has been sustained in the international trade system.

With respect to Senator Grafstein, he is one of the great resources of the Senate in many different ways. In particular, he has become the parliamentary ambassador to the United States. I, too, have travelled with Senator Grafstein to Washington in times past and have been amazed at the number of congressmen and senators with whom he is on a first-name basis. They call him Jerry and say, "It's great to see you!" He does get through the door, taking our message with him. The honourable senator's comments with regard to Senator Grafstein are well deserved.

**Senator Gustafson:** The price differential between a bushel received in Western Canada and a bushel received in the U.S. is one thing. I also investigated the price of soft white wheat in Ontario. Today, in Ontario, the price for a bushel of soft white wheat is \$5.10. The futures price for September is \$6 per bushel, and they can sell it directly into the United States. Why are there two standards for grain prices in Canada?

• (1510)

**Senator Austin:** Honourable senators, Senator Gustafson is obviously questioning the role of the Canadian Wheat Board. That is an old and long dialogue. If the honourable senator wants the generic answer — and this is a question to which he knows the answer very well — I will supply it as quickly as I can.

**Senator Gustafson:** Honourable senators, the problem with that approach is that Canada's farmers will not be able to withstand these low prices. We have a global problem that has to be dealt with. These American prices are before subsidies. The Americans receive additional subsidies on top of the \$5.66 per bushel. I am simply saying that our farmers cannot withstand the situation. We will end up with farmers who are broke if something is not done.

**Senator Austin:** Honourable senators, I intend to learn a great deal more about this issue very quickly.

## HEALTH

## THE BUDGET—FUNDING OF NEW INITIATIVES

**Hon. Brenda M. Robertson:** Honourable senators, my question arises from the budget yesterday. Tuesday's budget announced \$665 million in funding over three years for public health, including the proposed national public health agency. Of this amount, \$404 million will be reallocated from Health Canada, with only \$165 million in new money.

Canada's health care system is severely underfunded. Paying for these new public health initiatives through the existing budget will put a strain on the system. If there is such a strong commitment to public health, why were these initiatives mainly funded with existing dollars and not new ones?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, it is to get the best value for government funds available.

**Senator Robertson:** I will have to challenge that response at another time.

## INDEPENDENCE OF NEW PUBLIC HEALTH AGENCY

**Hon. Brenda M. Robertson:** Honourable senators, last week the *Canadian Medical Association Journal* criticized the government's plans to create the new public health agency as an arm of Health Canada, instead of making it independent as the government has been repeatedly asked to do. Could the Leader of the Government in the Senate tell us the federal government's response to the CMA's concerns?

**Hon. Jack Austin (Leader of the Government):** The government's response is in the budget. It is intended that a public health agency be created as an agency still responsible to a minister of the government, but operating independently of Health Canada and reporting directly to the minister.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I have the honour of presenting six delayed answers to oral questions.

The first is in response to a question posed in the Senate by Senator Comeau on March 9, 2004, regarding the Auditor General's report on the sponsorship program's grant to Bluenose II Foundation.

The next four delayed answers are in response to four oral questions posed in the Senate by Senator ForreSTALL: on February 5, 2004, regarding the status of the investigation into the death of Corporal Jamie Murphy; on March 10, 2004, regarding an incident involving an Aurora aircraft; on March 11, 2004, regarding the Aurora Incremental Modernization Project; and on February 5, 2004, regarding the delivery of the G Wagons to, and the use of the Ilitis jeep in, Afghanistan.

The last delayed answer is in response to an oral question posed by Senator Kinsella on March 11, 2004, regarding whistle-blowing protection.

## PUBLIC WORKS AND GOVERNMENT SERVICES

## AUDITOR GENERAL'S REPORT—SPONSORSHIP PROGRAM—GRANT TO BLUENOSE II FOUNDATION

*(Response to question raised by Hon. Gerald J. Comeau on March 9, 2004)*

The Government has a comprehensive set of measures to deal with the Sponsorship Program including:

- an independent Commission of Inquiry and
- Special Counsel for the recovery of funds;
- ongoing investigations by the RCMP; and
- the work of the Public Accounts Committee.

The Minister as written to the Honourable Senator Wilfred P. Moore inviting him or the event organizer to submit any supporting evidence to the attention of the Quebec Superior Court Justice Mr. John Gomery, in charge of the Public Inquiry.

If anyone has any evidence of wrongdoing, it should be brought to the attention to these different inquiries.

The Government takes this issue very seriously. We have responded and continue to respond to any and all allegations of wrongdoing.

## NATIONAL DEFENCE

## AFGHANISTAN—INVESTIGATION INTO DEATH OF CORPORAL JAMIE MURPHY

*(Response to question raised by Hon. J. Michael ForreSTALL on February 5, 2004)*

The Canadian Forces are conducting a thorough and comprehensive investigation into the suicide attack. This investigation is ongoing and until such a time as it is complete, it would be inappropriate for me to speculate on its findings or the timings of the investigation.

Within the past month, the claims of the Taliban that the suicide bomber was Abdullah Khadr have proven to be false.

## INCIDENT INVOLVING AURORA AIRCRAFT—SCHEDULE OF INCREMENTAL MODERNIZATION

*(Response to question raised by Hon. J. Michael ForreSTALL on March 10, 2004)*

The aircraft was conducting routine operations under normal circumstances when a problem developed with one of the engines, leading to an uncontrollable propeller overspeed. The situation, though serious, was brought under control and the aircraft landed without further incident.



The Air Force decided, based on the nature of the incident, and the historical performance of the aircraft, that operational restrictions are not required on the fleet at this time.

The incident is currently under investigation by the Department of National Defence and it would be inappropriate to discuss any possible causes of the incident or results of the investigation until after the investigation has been completed.

#### UNTENDERED CONTRACT TO GENERAL DYNAMICS CANADA

*(Response to question raised by Hon. J. Michael Forrestall on March 11, 2004)*

The Department of National Defence is modernizing the Aurora through an incremental approach, which allows the Aurora fleet to continue to meet Canada's critical surveillance needs while undergoing major upgrades.

The project is progressing well and we are confident that it will be completed on schedule and on budget, and meet its operational goals. Data Management System production on the Aurora will commence in 2008 and the fleet will be operationally equipped in 2010.

The Data Management System contract was awarded on a competitive basis to General Dynamics Canada on May 31, 2002. This contract embodies the largest block of the modernization effort, including mission systems and software, in addition to the integration of state-of-the-art sensors.

All contracts issued under the Data Management System have been fully tendered. Amendments to the original contract have been made; however, this is not unusual for such a complex project. All amendments to the project have been subjected to the appropriate approval processes for spending and procurement, and are within the original approved scope of the Aurora Incremental Modernization Project.

#### AFGHANISTAN—USE OF ILTIS JEEP

*(Response to question raised by Hon. J. Michael Forrestall on February 5, 2004)*

The Mercedes Benz G Wagon is a proven off-the-shelf light utility vehicle that is used by over 21 countries. It is a versatile vehicle that is equipped with the latest technical innovations, and can be fitted with additional armour when required.

60 G-Wagons have arrived in Afghanistan and are being used to replace basic ILTIS vehicles. However, there are

some ILTIS vehicles that have been outfitted with additional equipment and are still being used in certain situations in Afghanistan.

#### TREASURY BOARD

##### WHISTLE-BLOWING PROTECTION

*(Response to question raised by Hon. Noël A. Kinsella on March 11, 2004)*

Since legislation has been tabled and since it will cover all public servants not only those who are unionized, it is the Government's view that the legislative approach is more opportune. Moreover, this approach is less susceptible to the vagaries of collective bargaining such as the individual preoccupations of 17 different unions and their individual timetables. As such, consistency of application may be achieved which would not be possible otherwise.

#### ORDERS OF THE DAY

##### BUSINESS OF THE SENATE

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I would like to call the Orders of the Day in the following order: first, Bill C-4, the ethics bill, followed by Bill C-18, the equalization bill; then Bills C-26 and C-27, and then Bills C-8, C-22 and C-24.

#### PARLIAMENT OF CANADA ACT

##### BILL TO AMEND—THIRD READING— DEBATE SUSPENDED

**Hon. Jack Austin (Leader of the Government)** moved third reading of Bill C-4, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

He said: Honourable senators, last week the Prime Minister said, in a widely reported speech to the Quebec Chamber of Commerce, "Nothing is more important than integrity. Integrity of the individual. Integrity of government." He spoke about changing the way Ottawa works, saying that this is not a slogan; it is a reality.

Honourable senators, I have been in the Senate for over 25 years. I know something of this institution, and I know many of you very well. I know that, whichever side of the chamber we are on, we all agree with the Prime Minister on the critical importance of integrity, at the personal level and at the institutional one.

Some of us, however, are not convinced that any change is required. Some senators I know believe that there have not been any ethical scandals in this chamber, so no change is necessary. Others accept that some change is necessary but feel that we have managed our own ethical standards well so far, can continue to do so, and Canadians will be just fine with that.

Honourable senators, we cannot ignore what is happening around us. As I said here on second reading of this bill, there is no issue that is more debated today than the issue of integrity — integrity in government, in the private business sector and in religious institutions.

We are not above this debate, honourable senators. We are, and are proud to be, a part of the Canadian democratic system. We serve the Canadian public and must respond to their concerns about ethics and integrity in our political system. Today, it is simply no longer good enough for us to know that we are honest and act with integrity. We serve the Canadian public — that is what we accepted in coming to this chamber — and the Canadian public must be able to see that we are acting with honesty and integrity. I believe that nothing less than the credibility of the Senate is at stake.

One witness who appeared before the Rules Committee last week was very frank with us. Professor Ian Greene, a political science professor at York University, told us:

The Canadian Senate does good work, but the work of the Senate is undervalued and therefore less effective than it could be because of the absence of good ethics legislation that covers the Senate.

Perception is important, honourable senators, as we well know. It is possibly more important in matters of ethical conduct than in just about any other area. Professor Greene told us, speaking again very frankly, that there is the perception in some academic quarters that a number of senators have been in conflict of interest positions, but there were no rules to prevent it. He added that he believed that is the perception among many opinion leaders, that rules are needed in the Senate and that it can become a more credible and effective body once the appropriate rules are in place.

Honourable senators, I have great confidence in the ethical standards and behaviour of my colleagues here, but we ignore these perceptions at our peril and we risk the credibility of the Senate as well.

How would Bill C-4 help? Bill C-4 is a very limited bill. All that it does — but this is critically important — is to establish the office of an independent ethics commissioner for members of the House of Commons and public office-holders, and the office of an independent ethics officer for senators. That is all it would do.

Some senators have suggested that with the passage of this bill, we would be required to open up our books, files, wallets, banks accounts, debts and so on. That is simply not the case. Nothing in this bill requires any disclosure of anything to anyone. After passage of this bill, it will be up to this chamber to establish the rules for a code of conduct. If honourable senators decide to require confidential disclosure of private interests to the Senate ethics officer, then and only then will disclosure to him or her be required. If honourable senators decide to require public disclosure of certain interests, then and only then will that be required.

• (1520)

However, honourable senators, this bill requires none of that. This bill only establishes the office of the independent Senate ethics officer. It will be up to us, honourable senators, to decide what the Senate ethics officer will do, what he or she will be allowed to ask, what if anything we would be expected to tell him or her, and how the entire process will work. This is explicit in the bill itself. Clause 20.5(1) says:

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

Justice Minister Cotler told the Rules Committee on March 10, 2004:

... the Senate ethics officer is a creature of the Senate. He or she is responsible to the Senate. Senators determine the parameters and contours of that office of the Senate ethics officer. If that Senate ethics officer should act in bad faith and go outside the performance of his functions to do what he does, then honourable senators have the ways and means to hold that person accountable.

I believe there is consensus in this chamber that we need to have a code of conduct and that an independent Senate ethics officer should oversee such a code of conduct. This bill establishes the office of the Senate ethics officer, to give us the institutional structure to proceed with a code of conduct.

Some have suggested that we are putting the cart before the horse, providing for the establishment of the office before we have a code of conduct. This is one of those situations where it is difficult to know which is the horse and which is the cart. We are committed to a code of conduct, and work is proceeding in our Rules Committee to draft a code for our consideration. However, we need the institutional framework, the independent Senate ethics officer, as a critical piece of the process in renewing our commitment to integrity and ethical conduct in this chamber. That is what this bill will do, and that is all that this bill will do.

I wish now to turn to some of the issues that have been raised about the bill. Some senators are concerned, I know, about the manner of appointment of the Senate ethics officer. The clause in question is proposed section 20.1:

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

In my speech at second reading, I went into detail about the legal precedents for the Governor in Council role in the appointment. I do not propose to repeat those arguments except to say that this has been the accepted procedure for the appointment of parliamentary officers since Confederation and before. I wish to focus on why I believe this provision is necessary.

The critical objective is to ensure that the Senate ethics officer both is and is clearly seen to be independent. Let us be clear what independence we are talking about. He or she must be — and must be seen by Canadians to be — independent of us, the people whose conduct he or she will be overseeing.

How do we achieve this independence? Two fundamental elements are security of tenure and security of compensation. We have debated these issues frequently in the context of the critical importance of these elements for judges. We should apply the same standard in establishing an independent ethics officer for ourselves.

I will address each of these subjects briefly, but in reverse order. Security of compensation, or “follow the money” as one senator aptly put it, requires us to look at where the pay comes from and how it is determined. Under the amendment moved last year by Senator Bryden, the Senate would determine the amount of pay. Honourable senators, however we may try to couch it in the rules, this would clearly be a “one-off” pay standard, established by us uniquely for the Senate ethics officer and always subject to our discretion. That is not my definition of independence.

The bill provides that the Senate ethics officer would have the rank of a deputy head of a government department, that is, a deputy minister, and would be remunerated by the Governor-in-Council. Objective standards are set for such remuneration and they are the subject of an independent process. The government would have little in the way of discretion in establishing the pay and other conditions of employment for the Senate ethics officer.

Security of tenure means that the Senate ethics officer must be able to know that his or her job does not depend on our liking or agreeing with his or her opinions or recommendations. That is one of the fundamental problems with the amendment moved last time by Senator Bryden. By placing the hiring and firing within our control completely, there is no security of tenure. I know that Senator Bryden argues that we can write into the rules all kinds of safeguards, but we, or a Senate in the future, can simply change the rules. More important, the Senate ethics officer would know — and certainly the Canadian public would know — that this is a possibility. How will Canadians believe that we are truly being advised by someone independent of us if we have that kind of power over that individual?

The bill strikes what I believe is a good balance. The Governor-in-Council makes the appointment after consultation with the leader of every recognized party in the Senate, and after approval of the appointment by resolution of the Senate. We cannot appoint the person on our own, but neither can the Governor-in-Council. We must agree — and we each can serve as a critical check and balance on the other's power. The Senate and the Governor-in-Council have a veto over the appointment. That is a balance of power totally appropriate to this situation.

This kind of balance is not unique to this bill. Similar provisions are found in the statutes establishing ethics commissioners for British Columbia, Alberta, Manitoba, Ontario, New Brunswick,

the Northwest Territories and Nunavut. Quebec's jurisconsult is appointed by the National Assembly on the motion of the premier and with the approval of two thirds of the National Assembly. In Newfoundland and Labrador, the commissioner is appointed by the House of Assembly on the motion of the premier following consultation with the leader of the official opposition and representatives of the other registered parties having representation in the assembly. This balance has been demonstrated to work very effectively. To repeat, the Senate has a veto. Under the bill, the Governor-in-Council cannot appoint someone unless we have authorized it by resolution. That is a very powerful role.

Some senators will jump up and point to the fact that the bill authorizes the Governor-in-Council to appoint someone to the position on an interim basis, in the event that the Senate ethics officer is absent or incapacitated, or if the office is vacant. Honourable senators, this is a standard clause. Similar provisions are found in provincial and territorial statutes and it makes sense. There must be the ability to fill the position quickly on an interim basis should the circumstances require. Bill C-4 is clear that the appointment is for a term up to six months.

As I pointed out at second reading, there are similar provisions at the federal level with respect to other officers of Parliament, namely, the Auditor General, the Privacy Commissioner and the Information Commissioner. The provision applies to avoid a vacancy and, therefore, the absence of application of the code of conduct until the Senate agrees on a resolution to be sent to the Governor-in-Council.

The bill requires that there be prior consultation and approval of the appointment by a resolution of the Senate before the Governor-in-Council can make the appointment. As a minister of the Crown, on February 24, 2004, I stood here in my place and made a further commitment. I said:

...on behalf of the government I now make a commitment that prior to sending the Senate the name of any person to be proposed to the Senate to be a Senate ethics officer, the Leader of the Government in the Senate shall be authorized to consult informally with the leaders of every recognized party in the Senate and with other senators, and shall be authorized to submit to the Governor-in-Council the names of such persons who shall, in the opinion of the Leader of the Government in the Senate, have the favour of the leaders of every recognized party, as well as the support of the majority of the senators on the government side, and the majority of the senators on the opposition side.

The Governor-in-Council, in turn, will make every effort to accommodate the interests of the Senate in ensuring that the Senate ethics officer is both seen to be independent and is in fact independent in the discharge of those duties that will be assigned to the Senate ethics officer under the code of conduct the Senate decides to adopt.

• (1530)

There has been a great deal of discussion about the status of my undertaking. Honourable senators, of course, I cannot bind future governments to accept this undertaking. That is not the nature of our democratic system. Just as the Parliament of Canada cannot bind future Parliaments, so this government cannot — and, frankly, should not be able to — bind future governments. That would undermine our whole system of electoral politics. This government believes that this undertaking has the power of being a good, workable, appropriate approach to this issue. For that reason, we believe that future governments will see fit to follow it. It is the government's hope that, with time, it will develop into a convention.

Undertakings are serious matters. As a minister, I take my undertakings very seriously indeed, and I know that the government that I serve will respect my undertaking to you. This is not something to be taken lightly. That, too, is a part of integrity. In fact, precedents have a particular significance here in Parliament. Honourable senators, allow me to quote from Beauchesne's *Parliamentary Rules & Forms*, 6th edition, at page 6:

Parliamentary Law is something quite different from the ordinary Civil Law or Common Law. Parliamentary Law is based on centuries of tradition and precedents which have marked the evolution of parliamentary freedoms from the time that the first Parliaments were governed under the Divine Right of Kings to the stage of parliamentary sovereignty which we have now acquired.

Of course, should a future government fail to observe this undertaking, the Senate has a powerful sanction at its disposal. Under proposed section 20.1, the Senate can simply not deal with the resolution approving the proposed appointment. That clause, as Professor Fabien Gélinas agreed, clearly gives the Senate the last word on the appointment. Professor Gélinas has suggested — and I know this view is shared by at least some honourable senators opposite — that my undertaking may be too vague for a convention to be formed and recognized in the future. When I pressed him on this, he elaborated that he was concerned about my statement that the Leader of the Government shall be authorized to consult informally with the leaders of every recognized party in the Senate and with other senators. Professor Gélinas said that much will depend on the definition of the words “authorized,” “consult” and “informally.”

Honourable senators, I trust you will agree that my authority to give the undertaking is not in question. The system simply does not go behind ministers' statements.

I believe we are clear as to the meaning of “consult.” Professor Gélinas is perhaps unfamiliar with the Senate. This commits the Leader of the Government to talk to the Leader of the Opposition in the Senate. I rely on his integrity to tell me whether the individuals being discussed have the support of a majority of his supporters. My undertaking also commits the Leader of the Government to consult with independent senators, and the leader

is also committed to ensuring that the senators on the government side support the individuals as well.

Finally, Professor Gélinas was concerned about the word “informally.” Once again, honourable senators, we have established ways of working here, and I quite appreciate that Professor Gélinas is not well versed in them. I think we recognize that these consultations cannot take place in a formal setting, nor must they. We all know that one must build up confidence in an informal process before one can move to a more formal one.

Let me remind honourable senators once again of the wisdom of Viscount Whitelaw in commenting on the practices of the House of Lords. He said:

I have learnt that a certain flexibility, together with a certain understanding of convention, has worked much to the benefit of this House.

Honourable senators, once again, let me say that, if the leader of the day has not correctly understood what has taken place, the Senate has the power not to pass the necessary resolution.

Before I conclude, I should like to address three other matters that have been raised. Some senators have questioned whether the bill is constitutional. They point to section 18 of the Constitution Act and argue that under that section Parliament cannot pass legislation to extend privileges beyond the privileges held at that time by the British House of Commons. They then point to *Rost v. Edwards*, a 1990 decision of the British Court of Queen's Bench, a trial court in Britain, which held that the British Registrar of Interests, a public document in which members disclose their private interests, is not privileged.

Honourable senators, I do not propose to detail the legal cases on this point. Suffice to say, the correctness of the *Rost* case has been questioned by two senior courts in Britain and by Erskine May. The Privy Council said:

In particular, it is questionable whether *Rost v. Edwards*, [1990] 2 All ER 641, [1990] 2 QB 460 was rightly decided.

That was in the case of *Prebble v. Television New Zealand Ltd*, a 1994 decision of the Judicial Committee of the Privy Council.

In 1998, the English Court of Appeal quoted *Prebble* approvingly, and specifically endorsed a generous approach to matters of privilege at issue. The issue there was directly on point for the matter of concern to us, more so than *Rost*. The issue was whether a court could look at what the Parliamentary Commissioner for Standards, the British House of Commons equivalent to the Senate ethics officer, did in an investigation. The court concluded that it lacked jurisdiction to review the commissioner, that the Office of the Parliamentary Commissioner for Standards was valid and constitutional and that how it functioned was beyond the review of the courts.

Justice Minister Cotler provided the Rules Committee with a detailed analysis of the law on this issue. He concluded:

In conclusion, British jurisprudence supports the conclusion that the subject of a code of conduct in the private interests of members with respect to members of the House of Commons performing their duties as such fall within the privileges, immunities and powers of the British House of Commons. Consequently, in that respect, Bill C-4 is constitutional legislation under section 18 of the Constitution Act.

Senator Grafstein asked about clause 1 of Bill C-4. That clause repeals sections 14 and 15 of the Parliament of Canada Act. I will quote the question raised by Senator Grafstein:

The provision is very interesting. It has a deep history. The provision provides that you cannot directly or indirectly, as a member of Parliament, either a senator or a member of the House of Commons, benefit knowingly or wilfully from a government contract. If you do, there is a very unique penalty, which is forfeiture.

Let us assume someone took a half a million dollars or benefited by that amount. Then the power of the statute allows the Crown or any agency to forfeit that money. Here is the question. If in fact we change that into a rule, would the Senate therefore have the power to forfeit that money from an offending senator, or, in the House of Commons, could the House in effect seek a remedy of forfeiture under its rules?

I have studied the provisions in question very carefully with respect to Senator Grafstein, and I am very cognizant of his astute legal skills. I read the provision somewhat differently. Section 14 of the Parliament of Canada Act uses the terms "forfeit" and "forfeiture," but in a way that is actually synonymous with a fine. The section generally prohibits senators from being party to certain government contracts. The forfeiture subsection, section 14(2), says:

Any person who contravenes subsection (1) shall forfeit the sum of two hundred dollars for each day during which the contravention continues.

Honourable senators, that is not a forfeiture of ill-gotten profits but, rather, a fine of \$200 a day. There is no power under these sections to recoup the half million dollars in Senator Grafstein's example; there is just the power to impose a fine of \$200 per day that the contravention continues. A fine by any other name, whether forfeiture or something else, is still a fine, honourable senators. Indeed, one could imagine that for someone in Senator Grafstein's hypothetical example a \$200-per-day fine could be seen by some as an acceptable cost of doing business. It bears no relation whatsoever to the profits or the impropriety of the act. Indeed, the procedure required to impose this fine set out in sections 14 and 15 — section 15 being the other section of the act that would be repealed — is archaic. Rather than something that can be imposed on a finding of a breach of the section, the bill requires that the proceedings be brought "by any person who sues

for it in any court of competent jurisdiction in Canada." Further, those proceedings must be initiated within one year of the time when the forfeiture and/or fine was incurred.

• (1540)

I will also point out that the prohibition against government contracts contained in section 14 was clearly written for another time. Indeed, the drafting has had unfortunate results. While the proposed section appears to prohibit a senator from entering into a contract with the Government of Canada, the exceptions are so broad as to make the prohibition of very limited application today. At the same time, this is the infamous section whose drafting has been interpreted to prevent senators from serving on the boards of charitable organizations that receive government funding.

These are archaic provisions designed for another time. I thank Senator Grafstein for raising them, as they demonstrate the pressing need for an updated set of rules with a modern system to ensure that they are followed.

Another issue that was raised concerns the privileges that the bill specifies will attach to the Senate ethics officer. Some senators have noted that the bill provides explicitly that the Senate ethics officer "enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions." I am referring to proposed section 20.5(2). They have suggested that this is redundant; if the Senate ethics officer were carrying out his or her duties within the Senate, then he or she would have the privileges without that provision.

Honourable senators, I will only say that this provision was included in the bill to respond to concerns expressed by our Law Clerk and to assuage concerns expressed by some honourable senators who were anxious to be absolutely clear that the actions and activities of the Senate ethics officer would be protected by privilege.

The last issue I want to address was raised yesterday, immediately before the scheduled clause-by-clause consideration of this bill by the Rules Committee. Mr. Reid, the Information Commissioner, expressed for the first time concern that the activities of the new ethics commissioner would not be subject to the Access to Information Act. The current Ethics Counsellor, the position now held by Howard Wilson, is subject to the act.

I would point out that Mr. Reid was very clear that he has no objection to the bill insofar as the Senate or the Senate ethics officer is concerned. His only concern is with respect to the ethics commissioner, and specifically with respect to the ethics commissioner's oversight of public office-holders.

In general, honourable senators, we have been respectful of the choices made in the other place with respect to their ethics commissioner, just as we expect them to be respectful of our choices with respect to the Senate ethics officer. Nevertheless, I wish to address the concerns that were raised.

First, I want to clear up a point on which there seemed to be some confusion among senators yesterday. Some senators appeared to conclude from Mr. Reid's testimony that the bill would exempt public office-holders — of whom there are some 2,400 — from the Access to Information Act. Honourable senators, this is absolutely not the case. Public office-holders, senior civil servants, Governor-in-Council appointees, and so on, will still be subject to the Access to Information Act. All the usual matters related to their performance of their duties that are accessible today will continue to be accessible. Canadians will still be able to file access requests and obtain the same information about the workings of their government and the regular activities of public office-holders performing their duties. The only thing that will change will be the ability to file requests about any dealings the public office-holders may have had with the ethics commissioner.

Again, let me be clear: Mr. Reid was not expressing any concern with respect to the bill's provisions concerning cabinet ministers, ministers of state or parliamentary secretaries, who are all public office-holders. This bill establishes a strong regime of increased transparency and public accountability. The bill is very clear, for example, that if the ethics commissioner receives a complaint from a parliamentarian about a possible breach by a cabinet minister of the Prime Minister's code of conduct, then the ethics commissioner is required to examine the matter and report. That report must be made available to the public.

The issue that was raised in the committee by Mr. Reid related to the other public office-holders, mainly senior civil servants and other Governor-in-Council appointees. Under the bill, their dealings with the ethics commissioner would not be accessible under the Access to Information Act. In fact, we were told that the Privacy Act has operated to ensure that personal information is not released. It is thus far from clear that the right to request this information about senior civil servants and Governor-in-Council appointees has ever yielded any information.

However, I find it difficult to imagine any information about a senior civil servant in the Ethics Counsellor's files that would not have been exempt from release. The nature of the dealings would likely be things like confidential disclosure of one's bank accounts or other private interests and, perhaps, confidential advice received from the Ethics Counsellor. Certainly, we were told very clearly that this was never an open ended accessible issue, so it is not clear to me that the bill is shutting down an open and important window on the workings of our government.

In any event, there is a point of principle here. The current Ethics Counsellor is, as we all know, not an officer of Parliament. He is a government employee, a civil servant. One of the critical objectives of this bill is to create an ethics commissioner who is an officer of Parliament. As such, the ethics commissioner will report directly to Parliament, something that the Ethics Counsellor does not now do.

Mr. Reid was very frank when he appeared yesterday before the committee. In his view, all officers of Parliament should be subject to his jurisdiction under the Access to Information Act. The fact

is, however, that the Auditor General is not subject to the Access to Information Act; the Privacy Commissioner is not subject to the Access to Information Act; the Information Commissioner himself is not subject to the Access to Information Act; and the ethics commissioner would similarly not be subject to the act.

Mr. Reid said that he freely answers any requests for information about his office. That is a different thing. He is not required to do so under the act. The critical point, honourable senators, is that officers of Parliament report to Parliament. They do not, as Mr. Reid suggests, report to each other, nor do they report through each other to us. They report to us, and they are responsible to us. I believe that is the correct and proper system, and that is what is reflected in the bill before us. Mr. Reid was very clear. He said:

The power of a parliamentary committee is significantly greater than that of the citizen under the Access to Information Act.

The House of Commons has the power to call for information with respect to the ethics commissioner, notwithstanding that the office is not subject to the Access to Information Act. Mr. Reid agreed; his argument was that, to date, Parliament has not seen fit to exercise this power very often. We saw this power exercised by Parliament in connection with the previous Privacy Commissioner, Mr. George Radwanski.

Honourable senators, the other place surely has the right to exercise its discretion when and how it chooses. I, for one, would be loath to presume to replace their discretion with that of the Information Commissioner.

Honourable senators, I believe this is a good bill. I believe that an independent Senate ethics officer will be helpful to us as individual senators and to the credibility of the Senate as an institution.

Is Bill C-4 a perfect bill? Honourable senators, in over 25 years in this place, I have yet to see a perfect bill. We are human, as are our drafters. Over time, indeed, we may find amendments that should be made to improve the processes being instituted in the bill, and that is, of course, the essence of our legislative process.

However, this bill has been a very long time in coming. The issue has been studied for more than 30 years, and various draft legislation has been prepared and studied for more than 10 years. In cases such as this, the expression "*le mieux est l'ennemi du bien*" applies.

Before taking my seat I want to express my thanks to all those senators who have played a key role in seeking an ethics officer and a code of conduct for the Senate. I hope the time has come. We must commend Senator Oliver for the work that he has done as expressed by the Oliver-Milliken report. Senator Raynell Andreychuk has long been a supporter of code of conduct legislation, and has shared her view on many occasions. Senator Beaudoin has also been a supporter of legislation on this topic.

• (1550)

On the government benches, a debt of gratitude is owed to many senators. I wish to mention Senators Carstairs, Milne, Bryden, Joyal and Kroft for the time and dedication they have given to this issue, as have many others in this place.

Honourable senators, we have a responsibility to Canadians and, I believe, to the institution of the Senate to act. I hope you will join me in supporting Bill C-4.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, would Senator Austin allow a question?

**Senator Austin:** Certainly.

**Senator Lynch-Staunton:** My question is on the voting formula that is being proposed, which is novel. However, I am not convinced that it will be effective, because, as the government leader said, it is only binding on the present government. As we know, chances are that dissolution will take place in the next few months, if not the next few weeks. Hence, unless consultations begin immediately, I do not see the validity of this formula because of its short lifespan.

More important than that, I had sought at one time to propose an amendment to a bill — the subject matter is unimportant — to allow its passage with at least a two thirds majority. I was immediately referred by the Law Clerk to section 36 of the Constitution Act, 1867, which reads, in part: "Questions arising in the Senate shall be decided by a Majority of Voices..."

My question is to the Leader of the Government in the Senate is this: Does he have a legal opinion to confirm that his suggested formula — requirement of a majority on the government side and on the opposition side — does not contradict section 36?

**Senator Austin:** I appreciate Senator Lynch-Staunton referring to section 36 of the Constitution Act, 1867. The undertaking I have given does not require a vote. Rather, it requires a consultation and the approval of both the Leader of the Government in the Senate and the Leader of the Opposition in the Senate, as well as the advice of each that a majority of our respective supporters would support such a resolution. Thus, no vote is being taken. That is one of the answers I gave to a question posed by Senator Oliver at second reading.

**Senator Lynch-Staunton:** Does that mean that the Leader of the Opposition, to be an obstructionist, could refuse to admit that he had a majority of his supporters on side so that the issue would never be brought to a vote?

**Senator Austin:** I think that is what it means. I believe — and the government believes — that the appointment of a Senate ethics officer, as expressed in a resolution, should be non-partisan and should have the support of a substantial number of senators in this chamber. The position of ethics officer would be significant in respect of the work of the Senate and the role of senators.

**Senator Lynch-Staunton:** Surely, by denying a huge majority the right to support a bill by allowing the opposition, small as it might be, to allow that issue to come to a vote is not democratic, is it? I find that your formula plays into the hands of an obstructionist opposition, and I do not know if even I would want to be a party to that.

**Senator Austin:** Honourable senators, the convention has been, and, I believe, the overwhelming precedent has been, that the Leader of the Opposition, through the life of this chamber, whether Liberal or Conservative, would act responsibly in the interests of this chamber and would not arbitrarily provide false information in respect of the support of opposition senators.

**Senator Lynch-Staunton:** I want to choose the right words. I would never suggest that I would give false information. However, if we were only 10 in all and six disagreed, there could be six senators out of 100 refusing the right of the chamber to vote. That could well happen.

I am certain the whole matter is theoretical, and you have answered my question. It is not a question of a double majority in the chamber; each caucus must confirm a double majority to allow a vote in this place.

Do I understand that this commitment would be valid only for the present government and would be no longer valid following dissolution? It would not be binding on a future government. Similar to a minister's letter, it would be binding only on him and not on his or her successor.

**Senator Austin:** Honourable senators, the law of Parliament is such that no Parliament can bind a future Parliament. Therefore, undertakings are good and valid for this Parliament, which would, of course, survive a prorogation but not dissolution.

**Hon. Anne C. Cools:** Honourable senators, I wish to ask the government leader a question. In his remarks, he talked about the objective standards around the appointment of this proposed position. We have other officers of the Senate — for example, the Black Rod and the Clerk of the Senate. Could the honourable senator do a comparison for me? Would the proposed position be coordinate, superior, inferior or equal to the position of the Clerk of the Senate? The proposed position would be technically ranked "deputy head." What is the rank of the Clerk of the Senate? What is the security of tenure for the Clerk of the Senate and for the proposed Senate ethics officer? What is the removal process for the Clerk of the Senate and what would be the removal process for the proposed Senate ethics officer? I would like a better understanding of the subjectivity.

**Senator Austin:** Honourable senators, there were many questions put in that one question. The Clerk of the Senate has deputy minister rank under Order-in-Council. Removal of the clerk would be on an address by this chamber to the Governor-in-Council, as in this bill. However, this bill is superior in one way in terms of process — that is, this chamber controls the appointment of the proposed Senate ethics officer through the requirement that a resolution be passed. The other offices Senator Cools has mentioned do not give the Senate such a role.

With respect to how they rank in the world, they all have different functions, and so they do not rank by comparison.

**Senator Cools:** The honourable leader spoke about the removal process and the proposed position of deputy head. What is the security of tenure for the Clerk of the Senate, and what would be the security of tenure for the proposed Senate ethics officer?

**Senator Austin:** I would say that the clerk is doing an exceptional job, and so I cannot address a hypothetical question.

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

**Senator Austin:** Under the bill, as Senator Cools is well aware, the Senate ethics officer would be handed a seven-year tenure and could be removed only by Senate address to the Governor-in-Council and by action of the Governor-in-Council.

**Hon. Gerald J. Comeau:** Honourable senators, I want to be absolutely certain of this. Could the Leader of the Government confirm that the undertaking is binding only on the current Parliament? Hence, since we are expecting an election soon, the odds are that we would not have time to recruit a candidate for the position of Senate ethics officer. In other words, we would have time to pass the bill but not to recruit a candidate. Therefore, the appointment would probably occur in the new Parliament. For that reason, the minister's undertaking, even if he were to be the Leader of the Government in the Senate in a new Parliament, would no longer be valid. Am I reading this right?

**Senator Austin:** Honourable senators, as I have said, the undertaking can only be valid for this Parliament. That is the law of Parliament. According to Viscount Whitelaw, whom I have frequently quoted, the life and times of a Parliament develop, over time, precedents and conventions. They are followed through decades, in spite of the fact that no Parliament can bind another Parliament. I would hope that that might take place here.

I would also say that I could not speak to the future. I do not know who will be Leader of the Government in the Senate in another Parliament. However, I believe the undertaking is important and should be followed from time to time.

I would also say that what does not change from one Parliament to another is the existence of the rules. Should it be desired in the future to consider the undertaking in the rules, then that would be the business of the Senate at that time.

**The Hon. the Speaker:** Honourable senators, it being four o'clock, pursuant to the order adopted by the Senate on February 23, 2004, I am obliged to rise and interrupt the proceedings for the adjournment of today's sitting.

Debate suspended.

The Senate adjourned until Thursday, March 25, 2004, at 1:30 p.m.

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