



CANADA

Debates of the Senate

1st SESSION

•

38th PARLIAMENT

•

VOLUME 142

•

NUMBER 42

OFFICIAL REPORT
(HANSARD)

Tuesday, March 8, 2005



THE HONOURABLE DANIEL HAYS
SPEAKER

CONTENTS

(Daily index of proceedings appears at back of this issue).

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: <http://www.parl.gc.ca>

THE SENATE

Tuesday, March 8, 2005

[Translation]

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of General Orazio De Minicis and his wife Franca. General De Minicis is the military attaché of the Embassy of Italy. They are the guests of the Honourable Senator Ferretti Barth.

On behalf of all senators, I welcome you to the Senate.

[English]

SENATORS' STATEMENTS

ROYAL CANADIAN MOUNTED POLICE

TRIBUTE TO SLAIN CONSTABLES

Hon. Joyce Fairbairn: Honourable senators, the collective heart of the citizens of Alberta was broken last week as four young officers of the Royal Canadian Mounted Police were murdered in the small town of Mayerthorpe. Their deaths, which occurred in the line of duty, brought a flood of sympathy and deep sadness from every corner of Canada. Constable Peter Schiemann, of Stoney Plain; Constable Lionide Johnston, of Lac La Biche; and Constables Anthony Gordon and Brock Myrol of Red Deer epitomized the qualities of courage and dedication that are the daily workload of our security forces across this country. It is hard to describe the pride Albertans feel for the Royal Canadian Mounted Police. They have been an integral part of our history since they rode across the plains from Manitoba to shut down whiskey forts, to build peace and friendship with our Aboriginal peoples, and, of great significance, to create a presence of authority over a somewhat vague border between Canada and the United States.

The young men who gave their lives did so believing in the fundamental importance of securing the safety of citizens, of protecting goods and property and of strengthening our laws, which are as fundamental to our existence now as they were when the Mounties met the settlers. There is no way we can even imagine the shock and the grief that is felt by the families, especially the four young women who were building good and happy lives for themselves and their Mounties. We salute them in

our prayers and with our support for the values represented by their brave partners who chose the Royal Canadian Mounted Police as their life's work. May they rest in peace and in honour.

CITIZENSHIP AND IMMIGRATION

DEPORTATION OF MR. ERNST ZUNDEL

Hon. David Tkachuk: Honourable senators, on March 1, Ernst Zundel was finally deported to Germany after spending two years tying our courts into knots while trying to escape his fate. Mr. Zundel is infamous in Canada and abroad as a writer and promoter of anti-Semitic literature, and as a Holocaust denier. The Federal Court has determined him to be a national and international security threat and has upheld the security certificate that was initially issued against him in April 2003. In his recent ruling, Federal Court Justice Pierre Blais said that Mr. Zundel's views on the Holocaust are vile and perverse but, on their own, were not enough to label him a security threat. Instead, Justice Blais said of Mr. Zundel that he "crossed the boundaries of free speech and ... entered the realm of incitement to hatred and potential political violence in relation to the White Supremacist Movement."

Justice Blais also stated that Mr. Zundel sought to destabilize the German government from our country. These lengthy and costly court proceedings might have been avoided if Mr. Zundel had been deported to his native Germany in February 2003 as authorities from that country had requested. Although Canadians were promised swift action when Mr. Zundel was initially returned here, they had to wait two years for his removal. His future now rests in the hands of the German courts because he will stand trial there on charges of denying the Holocaust and inciting hatred.

It has been disappointing over the past two years to see many people categorize Mr. Zundel's detention as an attack on free speech in our country. Thankfully, many more Canadians have stated their belief that he does not deserve to benefit from the rights and privileges of living in one of the most tolerant societies in the world. Ultimately, I think Ernst Zundel is to be pitied because he has wasted his life spreading lies and hatred.

Honourable senators, the Holocaust did not begin with one cataclysmic act of brutality and murder. Rather, it expanded and evolved over time through bigoted thoughts and words that were eventually translated into actions of unimaginable hatred and evil. Through his words, Ernst Zundel sought to contaminate hearts and minds against the Jewish people and to incite similar violence. Fortunately, Ernst Zundel will no longer be able to use Canada as a launching point for his views. However, it would be extremely naive for anyone to think that Canada's problems in this respect have left with Mr. Zundel. He may be a lynchpin, but there are others in our recent past who have desecrated cemeteries and firebombed a school simply because they are Jewish. Hate-mongering has no place in our country, and we must be ever vigilant in our effort to guard against it.

[Translation]

INTERNATIONAL WOMEN'S DAY

Hon. Lucie Pépin: Honourable senators, today we are celebrating International Women's Day. It is a special day for us and an occasion for reporting on our progress towards equality.

Our presence in this chamber is proof that the framework within which the "Famous Five" pursued their demands has changed considerably.

Women are indeed "persons." Our right to equal treatment is guaranteed by law. We have taken our place in many sectors that were once regarded as "for men only."

• (1410)

Women today are better educated and have full control of their bodies and their destinies. However, the price that some have had to pay has often been very high. A recent survey showed that women who work outside the home are exhausted and with good reason. While women are active in large numbers in the labour market, they are still responsible for the lion's share of household work.

The growing poverty of single mothers and older women living alone in our country concerns us, as does violence toward women in our communities. I am sure honourable senators were shocked to read the report by Amnesty International which highlighted the unequal treatment of Aboriginal women. These women are apparently eight times more likely to become homicide victims at the hands of their spouses than other Canadian women. This is certainly food for thought.

In addition to violence, people smuggling is a threat to Canadian women, especially immigrant women. Well-established networks in the major cities of our country prey on the vulnerability of these women, these young girls, and I would add, these children. This situation is intolerable and unacceptable but it is a fact of life in many Canadian cities.

Women also account for a great deal of the unpaid work in our country, and many insecure jobs are reserved for them.

The average representation rate for women in Canadian legislatures is 20 per cent. This low rate, added to the 12 per cent of mayors and 21 per cent of municipal councillors who are women, is a good indication of the under-representation of women in political life. The limited role of women in senior management positions is another challenge facing us. Women occupy 11 per cent of management positions; the majority of those jobs are reserved for men in suits.

The theme for International Women's Day in Canada is "You are here: Women, Canada and the World." The few remarks I have shared with you show exactly where we are. Women's

integration into society is still battling against stereotypes. However, we have made great progress. Despite everything, women are staying the course.

I want to take this opportunity to pay a special tribute to the wives of members of the Canadian Forces who show great courage and resourcefulness in a situation that is not always easy. They deserve special mention.

In conclusion, I invite honourable senators to show their solidarity with the millions of women around the world who struggle every day for the right to vote, to be educated, to participate in decisions that concern them and, sometimes, simply to be treated as human beings.

CANADIAN DIABETES ASSOCIATION

Hon. Marilyn Trenholme Counsell: Honourable senators, the Canadian Diabetes Association has asked me to thank senators for their support of the generous allocation of funds in the 2005 budget.

Last March, members of the Canadian Diabetes Association asked the federal government for \$50 million to develop an aggressive and sustained national strategy. Without such an effort, three million Canadians would be living with diabetes by 2016; an increase of 72 per cent.

[English]

In September 2004, Canada's Minister of Finance challenged the Canadian Diabetes Association to obtain cross-party support for a national diabetes strategy, promising the support of the Government of Canada in return. There then followed a massive effort by volunteers across the land — formal presentations, committee briefings, and over 3,000 letters to members of Parliament.

Their work was not in vain. The 2005 budget gave a five-year commitment to a Canadian diabetes strategy valued at more than \$50 million — \$25 million for an Aboriginal diabetes initiative, \$18 million for prevention, enhanced care and improved access to services, increased funding for research, and income tax relief for parents of children with type 1 diabetes.

[Translation]

Yesterday, at a parliamentary reception, members of the Canadian Diabetes Association were happy and grateful. Promise made, promise kept!

[English]

Government has responded. Now, as never before, Canadians must respond.

We have heard the words, "It's the Charter, stupid!" When it comes to type 2 diabetes, "It's the lifestyle," and far too many of us are stupid. In the last two decades, obesity in children has doubled. A child born on this continent in 2000 has a one-in-three chance of becoming a diabetic.

[Translation]

The Canadian Diabetes Association says that diabetes costs our public health care system \$13.2 billion per year. By 2020, those costs could rise to more than \$19 billion.

[English]

Thirty minutes of exercise a day reduces the risk of type 2 diabetes by more than 50 per cent. The food we eat, the exercise we get and the lifestyle we choose can go further than any government dollars when it comes to the prevention and treatment of diabetes.

The Canadian Diabetes Association is up to this challenge. The Government of Canada is up to this challenge. Are Canadians ready to accept the challenge?

INTERNATIONAL WOMEN'S WEEK

Hon. Elizabeth Hubley: Honourable senators, March 7 to 13 is International Women's Week. I know that all honourable senators join me in recognizing the immeasurable contributions that women make to contemporary Canadian life. When I think of these contributions by women to the social, economic, political and cultural development of our country, honourable senators, I am reminded of a richly woven and beautiful patchwork quilt, its many squares representing the diversity of work, ability and experience that is the world of women.

My own province of Prince Edward Island has been referred to as a patchwork quilt of cultivated fields, pastures and woodlands. In one particular patch, along the beautiful shore of the Tryon River, lives a truly remarkable woman named Betty King Howatt. Betty Howatt is a farmer, writer-broadcaster, environmentalist and a courageous voice in defence of Island heritage and the rural community.

Willowshade Farm was first settled by the Howatt family in 1783, and for half a century Betty, together with her husband Everett and son King, has grown apples of heritage varieties as well as a variety of other fruits and vegetables. Produce from the Howatt farm is legendary throughout the Island for its superb organic quality. Indeed, Betty and Everett Howatt have championed environmentally responsible farm practices in Prince Edward Island. They are highly skilled, productive farmers who have clearly demonstrated that values of stewardship and sustainability can go hand in hand with commercial success.

Betty and Everett Howatt were recipients of the 2003 Prince Edward Island Environmental Award for their outstanding contribution to protecting and enhancing the environment, and in 2004 Betty received a heritage award from the P.E.I. Museum for her inspired educational work to promote a better appreciation for and understanding of the small family farm. Her beautifully-written book, *Tales from Willowshade Farm*, is a delight for those who cherish the wonders of nature and growing things.

Honourable senators, Betty Howatt is an Island treasure and a distinguished Canadian, a woman of incredible knowledge and strength, and it gives me great pride to acknowledge her during International Women's Week.

ROUTINE PROCEEDINGS

CANADA-MEXICO INTER-PARLIAMENTARY MEETING

THIRTEENTH ANNUAL CONCLAVE,
JANUARY 24-27, 2005—REPORT TABLED

Hon. Daniel Hays: Honourable senators, I have the honour to table, in both official languages, the report of the joint inter-parliamentary delegation that attended the thirteenth Canada-Mexico Inter-Parliamentary meeting held in Mexico City from January 24 to 27, 2005.

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Donald H. Oliver, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, March 8, 2005

The Standing Senate Committee on National Finance has the honour to present its

THIRD REPORT

Your Committee, to which was referred Bill C-24, An Act to amend the Federal-Provincial Fiscal Arrangements Act and to make consequential amendments to other Acts (fiscal equalization payments to the provinces and funding to the territories) has, in obedience to the Order of Reference of Tuesday, February 22, 2005, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

DONALD H. OLIVER
Chair

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

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

• (1420)

QUESTION PERIOD

HEALTH

AVAILABILITY OF HEART MEDICATION IN DERAL LA

Hon. Wilbert J. Keon: Honourable senators, my question for the Leader of the Government in the Senate is in regard to the availability of the heart medication Inderal LA.

Honourable senators, the situation came to my attention through a letter from a patient in which she claims that she cannot obtain the drug that she needs to treat her blood pressure because it is not available. Both her family doctor and pharmacist told her that the difficulty in accessing this drug is a result of shortages related to its sale on the Internet. She contacted Health Canada and the Ontario provincial government for assistance, but was unable to achieve any results. Could the Leader of the Government make inquiries and tell us if Health Canada can do anything to help this individual obtain this particular heart medication? I repeat: It is called Inderal LA.

Hon. Jack Austin (Leader of the Government): Honourable senators, it is of concern to the government that the operation of Internet pharmacies may create shortages of certain important drugs in Canada. This is the first report that I have had of an actual shortage. I would be delighted to refer this matter to the Minister of Health. I will look to the honourable senator to provide me with further details so that the person to whom he refers can be contacted and a statement made, the pharmacies to which she applied spoken to and the background checked. It is a matter that all of us would say is of serious import to our health care system.

Senator Keon: Honourable senators, I have with me the letter from the patient. I will have it photocopied and delivered to the minister's office.

As a supplementary, the *National Post*, on November 13, 2003, about a year and a half ago, indicated that some pharmacists at the time were having trouble accessing this drug from wholesalers. Perhaps the minister could look back over the past 18 months to determine if indeed this drug has not been available to patients, as it is a very important drug.

Senator Austin: I will look also for that story. I have written down the date. An important part of the inquiry would be to determine where this drug is manufactured and who are the pharmaceutical wholesalers ordering it. There is obviously a background story to be told here. I wish to express my appreciation to the honourable senator for bringing this matter to my attention.

AGRICULTURE AND AGRI-FOOD

BOVINE SPONGIFORM ENCEPHALOPATHY— AID TO CATTLE INDUSTRY

Hon. Donald H. Oliver: Honourable senators, my question has two parts. It deals with the federal budget and then the ongoing crisis of BSE.

Many agricultural sectors have suffered heavy losses as a result of BSE, including cow-calf operators, dairy producers, feedlot operators and producers of other ruminant livestock, and they stand to lose more with the recent court injunction in the United States that will prolong the border closure. The government could have taken several measures to address the problems faced by producers hard hit by the BSE crisis in its recent budget, but it chose not to. Some have proposed that the government should have considered tax deferrals in the 2004 Budget for producers hit by BSE. Last week the Minister of Finance mused about a cash

bailout. Could the Leader of the Government in the Senate provide us with the government's public policy direction on this proposal?

Hon. Jack Austin (Leader of the Government): Honourable senators, to be succinct, all of the policies of the government are on the Agriculture and Agri-food Canada website.

Senator Oliver: Another proposal put forth by producers is to introduce tax incentives to increase domestic cattle and other ruminant slaughter capacity. Considering the Canadian economy has lost some \$7 billion in economic activity because of BSE, tax incentives would be a very innovative response. In view of the fact that the border will remain closed for some time, would the Leader of the Government in the Senate please offer his government's views about the idea of tax incentives to increase ruminant slaughter capacity?

Senator Austin: Honourable senators, as many in the chamber know, the federal government alone has provided \$1.9 billion to the cow-calf industry in direct financial support. In the last day or two, in responding to questions, the Minister of Finance indicated that the government was considering additional financial support. Also, some of the provinces have announced additional financial support.

I will refer the question of tax credits to the Minister of Finance and ask him to provide a response by way of a delayed answer.

The second part of my answer, honourable senators, relates to what Senator St. Germain has referred to in his questioning, that is, building domestic packing capacity. The government is determined to assist Canadian cattle producers by permitting a larger slaughter capacity in Canada. A new plant is underway in Prince Edward Island and another in Salmon Arm, British Columbia, led, of course, by private sector investment but with financial support from the federal government.

It is important to the cattle industry and to Canada's investment in that industry that third-country markets be developed more aggressively. Additional domestic capacity is required so that the prime cuts from Canada's beef production — and it is a prime beef production — are more widely available throughout the world.

• (1430)

I visit Hong Kong frequently — or at least I did before I became Leader of the Government in the Senate — and Canadian steaks are highly prized there. Beef is referred to as Canadian beef, Australian beef or U.S. beef, and Canadian beef is the leader in restaurant requests.

Hon. Gerry St. Germain: Did the government leader say that \$1.9 billion has gone directly to cow-calf operators? I raise this simply because they are the most vulnerable, are the most at risk and are price takers. If the minister is at the cabinet table and there are discussions in regard to how to assist the industry, I would urge him to seek out a special category for cow-calf operators because they are the ones with the cows on the ground. They are the ones who have to feed them. Senator Fairbairn knows well what I am talking about. If we deal with anyone it should be the cow-calf operations.

Traditionally, and even since assistance was first given out on this occasion, I do not think it has been focused in the right direction. For example, some of the monies have gone to processing plants, whereas, I believe, we should have been focusing on the cow-calf operations. I ask the minister whether he would consider urging the government to focus its assistance in that area.

Senator Austin: I thank the honourable senator for affording me the opportunity to correct the record. I meant \$1.9 billion to the cattle industry and, of course, the cow-calf part of that industry has also been supported, but not to that total.

In the early days of this crisis, the Province of Alberta was supplying money to the packing plants. I do not believe the federal government has done so.

Senator St. Germain: Honourable senators, I would hope that the focus would be on the cow-calf operators, and if the minister were to consult people in the industry, he would be informed quickly of where the assistance is the most required.

CANADA-UNITED STATES RELATIONS

MISSILE DEFENCE PROGRAM— LINKAGE OF NON-PARTICIPATION TO OTHER ISSUES

Hon. Gerry St. Germain: Honourable senators, my question relates to the fact that Canada's ambassador to the U.S. recently linked developments on the BSE file and the softwood lumber dispute with Canada's position on missile defence. I tried to put this question yesterday but I never really got an answer.

Putting aside reports that the missile defence decision was driven by internal politics — I think of the Liberal Party, which I believe is in and of itself problematic — is it this government's view that it is desirable to be making this linkage in terms of leverage? Is the government taking the perspective that there is something to be gained by adopting this posture of linking BSE and softwood lumber to the missile defence scenario?

Hon. Jack Austin (Leader of the Government): Honourable senators, the government does not believe in linkage in dealing with issues of trade in our bilateral relationship with the United States, nor did I take the ambassador's comment to imply linkage. I think Senator St. Germain knows that the ambassador's comment was not intended to describe linkage but to describe some public opinion in Canada, and only that.

Senator St. Germain: Is the leader saying, then, that the ambassador did not say what he said, and that he was not freelancing?

Senator Austin: I am saying just what I said.

MISSILE DEFENCE PROGRAM—EFFECT OF NON-PARTICIPATION ON BUSINESS COMMUNITY

Hon. Gerry St. Germain: My concern continues in this vein because of the relationship with our American friends. Yesterday, I made reference to the fact that 85 per cent of the CEOs in this

country are concerned about this decision. They believe it could negatively impact our future trade relations and our future relations in general with the U.S.

The Leader of the Government in the Senate did not really dismiss my concerns, but he came back with a statement to the effect that there are people who worry extensively. Really, they should be worried, because basically they are the equivalent of the cabinet of corporate Canada. Just as the Leader of the Government in the Senate is a cabinet minister to the Government of Canada, they are basically the cabinet ministers to corporate Canada.

Is the minister saying that if something of a grave nature happens in the country, the cabinet's reaction really should not be taken that seriously? That is the inference that I received from the leader's response regarding this information that I, as a matter of fact, passed to him yesterday.

Hon. Jack Austin (Leader of the Government): Honourable senators, I really said two things yesterday, and I will say one further thing today: Certainly the survey did not put that question to all CEOs in Canada. It put the question to a small sample of CEOs, and then hypothesized where the entire business community might sit.

I did say, and Senator St. Germain agreed with me — and I think anyone who thinks about it for a moment would agree with both of us — that change is always a challenge, in the business community or any other community. When the ground rules are dynamic, obviously all of us focus more carefully on how those changes impact on us. What we are seeing in the relationship with the United States are issues in which Canada pursues its interests and the United States pursues its interests.

Also, I made it clear, relying on an excellent editorial in the *Vancouver Sun*, which I quoted yesterday, whether it was the relationship between Prime Minister Diefenbaker and President Kennedy, or prime ministers and presidents since that time and to the present time, Canadian-U.S. bilateral trade has continued to expand without any measurable impact on other parts of the relationship, and the reverse.

Senator St. Germain: Honourable senators, if credit is to be given, the free trade agreement, which the Liberal Party at one time was talking about dismantling, obviously must be recognized as a significant reason for that increased trade.

As the minister knows, the biggest concern with business is the perceived commitment, and whether that perception is wrong or right, that is the major concern of the business community. It was perceived that the government would go along with the United States on this particular decision, so this is change that is scary. When business makes a verbal commitment, or a perceived commitment, they generally handle it in a way that the CEO would take it.

The biggest concern is that the President of the United States is taking nine days to respond to calls, and we discussed this yesterday. Former administrations, and even the former Prime Minister, received calls back from the President immediately. These are the reasons for the concerns of the CEOs.

We all believe in polling or we would not be here. The honourable minister has been in politics long enough and he knows polls are fairly accurate under most circumstances. Therefore, I ask the leader, does the government not understand the grave concerns of the CEOs? What will be done to rebuild this relationship that is so critical to the well-being of their corporations?

Senator Austin: Honourable senators, this government has been focused on building the relationship between Canada and the United States and has done so with great success. The relationship between Canada and the United States at the level of leaders is made clear by the trilateral meeting which is taking place on March 23 in Texas, and the relationship continues at many levels of activity. We have over 300 formal agreements between the governments of Canada and the United States, and probably 3,000 or 4,000 other executive and working agreements. Most of them, if not all of them in total, are functional and beneficial.

• (1440)

With respect to the Canada-U.S. Free Trade Agreement, Senator St. Germain and one or two others here may recall that I was a supporter of the agreement, and I introduced the NAFTA agreement here in 1994 as the sponsor of that bill. There were problems, and very rightly-directed criticisms of both the Canada-U.S. Free Trade Agreement and the NAFTA. After more than 10 years, we see that some of those criticisms are accurate. Prime Minister Mulroney, if he had been successful in obtaining the waiving of anti-dumping and countervail, which was one of his initial publicly declared objectives, would have accomplished something truly great and beneficial. You may recall, honourable senators, that Prime Minister Chrétien pointed out that deficiency as one of the reasons for the Liberal Party's opposition at the time.

With respect to the concerns of corporate Canada, I am not discounting those concerns. As a businessman or as a leader in any field, I would want to feel comfortable in my environment. Sometimes, however, larger issues than business interests are involved. I know that the Canadian business community was also a bit discomfited with the decision of Prime Minister Chrétien's government not to participate in the Iraq conflict, and yet I heard no criticisms or arguments that this would destabilize Canada's bilateral relationship. This was a decision taken on a policy that was in the interests of the nation as a whole.

Senator St. Germain: I do not think you are accurate on that.

Senator Austin: In conclusion to Senator St. Germain's point, the Conservative Party did nothing to reassure the business community by avoiding taking a public position on the missile defence debate. As I said in this chamber, the Leader of the Opposition was asked by President Bush why the Conservative Party did not take a position in support of joining the United States in ballistic missile defence. If there is uncertainty, certainly the Conservative Party bears its own responsibilities there as well.

Senator St. Germain: Not on my behalf. I speak for myself, as a senator.

The Hon. the Speaker: Supplementary question, Senator Prud'homme.

Hon. Marcel Prud'homme: This is not a supplementary question. I hope I will have a chance, because questions and answers should be short. I have a question for the honourable minister.

The Hon. the Speaker: I have put you on the list and I will see you, Senator Prud'homme.

PRIVY COUNCIL OFFICE

ETHICS OF GOVERNMENT APPOINTEE GLEN MURRAY ATTENDING LIBERAL PARTY CONVENTION

Hon. Terry Stratton (Deputy Leader of the Opposition): In 2003, Howard Wilson advised that anyone with a government appointment should not attend the leadership convention of the Liberal Party. The government's policy position is that anyone with a part-time or full-time Governor-in-Council appointment should not participate in any partisan political activity whatsoever.

Will the Leader of the Government in the Senate inform the chamber whether the former Mayor of Winnipeg attended the Liberal convention last weekend?

Hon. Jack Austin (Leader of the Government): Honourable senators, to the extent that this question relates to government responsibility, I will seek an answer.

Senator Stratton: For the leader's information, Mr. Murray did indeed attend the convention. When asked by the media whether he felt it inappropriate for him to attend, he said that he felt it was very appropriate to be there. It was not until he was informed of the ruling by Howard Wilson that he virtually fled the convention hall, having been informed of the conflict of interest that he faced. Perhaps the minister can verify that as well.

Senator Austin: Certainly, to the extent that this is relevant to the government, I will make inquiries. However, if the facts are as Senator Stratton puts them, then I would say that there can be no concern with respect to Glen Murray's behaviour.

Senator Stratton: I would object to that decision because it goes to the ethics of the whole situation that our Prime Minister has vowed to change. He said that his government would be above reproach and be highly ethical. Here we have someone with a GIC appointment to a supposedly very ethical position, as chair of a round table on the economy and sustainable development, and his ethics are already being called into question. How can an individual serve as chair of such a committee and be deemed to have integrity and honesty if he felt that there was nothing wrong in attending the Liberal convention?

Senator Austin: Honourable senators, I thought I heard Senator Stratton say that Mr. Murray was not aware of the Howard Wilson ruling or of any rule preventing him from being there. If he was not aware, then the issue was not a decision on his part to act contrary to any ethical standard to which his attention had been drawn.

Senator Stratton: On the contrary, I think that it goes to the very core of the questions of ethics. If he is indeed a man of ethical character, he would have known that he should not have attended that convention.

Senator Austin: Honourable senators, there is a rule that presumes that someone acts in good faith. I have heard the evidence from Senator Stratton on the record now that Mr. Murray was not aware. In other words, he was acting in good faith. The moment he was made aware of the rule, he removed himself.

THE SENATE

APPOINTMENT OF WOMEN TO FILL CURRENT VACANCIES

Hon. Marcel Prud'homme: Honourable senators, I would like to follow the advice given yesterday that questions and answers should be short.

This is International Women's Week. I have suggested often to the leader, and to everyone who wants to listen, that the time has come to appoint more women to the Senate. In this, I am serious. I had a good education from my mother, who voted for the first time at the age of 49, after having fought all her life for that right.

There are now 16 vacancies in the Senate. The Prime Minister of Canada has the option, before the end of this year, of bringing the membership in the Senate to 53 women and 52 men. I have suggested that previously, and I am serious. I see some macho men smiling and others looking worried.

The time has come for this kind of equality, and we would be the first country in the Western world to have it. That would not stop us from changing the Senate, be it by electing it or abolishing it. In the meantime, Canada should show the way for the rest of the world.

Will the minister relay to the Prime Minister our wish that he consider appointing women until there are 53 women and 52 men in the Senate? Thereafter, we could proceed in the usual way.

Some Hon. Senators: Say yes!

Hon. Jack Austin (Leader of the Government): Honourable senators, as before, I will carry Senator Prud'homme's submission to the Prime Minister for his consideration.

Senator Prud'homme: It is a good suggestion.

• (1450)

Senator Austin: Honourable senators are aware that the prerogative of appointing senators is entirely that of the Prime Minister under Order-in-Council of 1935. As a member of the government, it would be exceeding my role to make a public declaration of my advice. However, I shall report to the Prime Minister the mood of the chamber at this moment.

Senator Prud'homme: He has "an option." Remind the Prime Minister of that well known phrase.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before going to Orders of the Day, I should like to introduce guests from the House of Commons. We have with us as a guest page Lauren Hurst of Richmond, British Columbia. Lauren is pursuing her studies in the faculty of social sciences at the University of Ottawa. She is majoring in international development and globalization.

Welcome to the Senate.

[Translation]

Rachelle Anctil is from Giroultville, Alberta. She is studying in the faculty of social sciences at the University of Ottawa, where she is majoring in international development and globalization.

We welcome you to the Senate.

[English]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): I should like to call government business in the following order: First, Bill S-18, followed by Bills C-39, C-12 and C-6.

STATISTICS ACT

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Bill Rompkey (Deputy Leader of the Government) moved third reading of Bill S-18, to amend the Statistics Act.

The Hon. the Speaker: Do you wish to speak, Senator Rompkey?

On motion of Senator Comeau, debate adjourned.

FEDERAL-PROVINCIAL FISCAL ARRANGEMENTS ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Fairbairn, P.C., for the second reading of Bill C-39, to amend the Federal-Provincial Fiscal Arrangements Act and to enact An Act respecting the provision of funding for diagnostic and medical equipment.

Hon. Wilbert J. Keon: Honourable senators, I am pleased to offer some remarks today on Bill C-39. This bill will amend the Federal-Provincial Fiscal Arrangements Act to implement the first ministers' health accord of September 2004, known as the 10-year plan to strengthen health care.

The accord commits the federal government to provide the provinces and territories with \$41 billion in health care funding over the next decade. This is a significant amount of money and the provinces will clearly welcome it after a decade or more of budget cuts.

Senator Carstairs carefully detailed the expenditures in her speech, so I will not revisit them in detail. I do, however, wish to raise some important issues.

I am of the opinion that this piece of legislation must be passed quickly. Simply put, the provinces need to receive the money they were promised last fall. However, my support of the passage of this bill should not be mistaken for an endorsement of the current direction of our health care system or the way it is funded. Somehow, we must come to the realization in this country that money alone will not fix the many problems that have taken root in our health care system.

The debate surrounding Bill C-39 affords me the opportunity to register my deep concerns about the health accord on two fronts: first, its lack of accountability, and second, its failure to strengthen primary care and community care. If we are ever to see meaningful and lasting change, these areas must be properly addressed.

Under this accord, considerable sums of money will be given to the provinces with no coherent plan for their use, no assessment of the quality of results, and even without making sure the money will actually go where it is intended. I believe it is not asking too much for those who use the system and fund it through their tax dollars to receive better accounting.

In the near future, Canadians will expect specific measurements from their governments on how this \$41 billion has been applied to lower their wait times or to increase the number of health care professionals in their areas. This will be especially true if Canadians do not see results.

A 10-year, \$5.5-billion wait times reduction transfer is created under this bill. The sum of \$4.25 billion will be paid into a third-party trust fund, which will be advanced to the provinces over the first five-year period, and beginning in 2009-10, \$250 million will be provided in an annual transfer.

The accord states that the wait times reduction transfer will be targeted for such areas as clearing blockages and training and hiring more health care professionals. The federal government rightly believes that the provinces will draw on most of these funds as soon as they are paid into trust.

This is a good example of the lack of shared accountability. What would happen if the money is drawn down and Canadians still do not see an improvement in the length of time they must wait for diagnostic tests or surgical procedures?

At some point in the future, the provinces and territories may very well say that the funds provided to them are insufficient to resolve these problems. They might then demand more money from the federal government, and we all know what will happen next.

Just as the federal government must ensure that the money it provides to the provinces is well spent, the provinces must be held accountable in how they carry out their constitutional responsibilities.

Clause 25 of the bill states that a committee of either or both Houses of Parliament will review the progress in implementing the health accord no later than March 31, 2008. A similar review will be held every three years. Beyond these parliamentary reviews, there is nothing in the bill before us that ties transfer payments to compliance.

In 2000, the first ministers committed to regular health reporting. The 2003 First Ministers' Accord on Health Care Renewal negotiated under the previous Liberal government contained an accountability mechanism that is curiously absent from the deal now before us. That health accord included performance indicators to measure timely access, quality, sustainability and health access and wellness. Although it was not perfect, the method of measuring progress was a good start.

Unfortunately, last year's health accord does not build upon what was established in the past. For example, in the area of wait times reduction, some benchmarks do not have to be established until the end of 2007. Also, health ministers do not have to report on steps to fulfill the home-care component of the accord until the end of year 2006.

Under the accord, a one-time payment of \$500 million will be provided to the provinces and territories for diagnostic and medical equipment. The bill states that this fund will also go toward specialized staff training with the ultimate goal of improving access to diagnostic and treatment services.

The provinces will receive this money on an equal, per capita basis.

• (1500)

Honourable senators may remember that not too long ago we learned that approximately 30 per cent of a federal medical equipment fund, established in 2000, had been used to buy such items as icemakers and lawnmowers. It is possible that such misuse could occur again. Although we may hope that it would not, I see nothing here that would prevent a similar situation.

Under this deal, hospitals will be the main beneficiary of the increased funding. While the portion of spending on hospitals has declined over the last 30 years, the Canadian Institute for Health Information reports that hospitals remain the single largest component of health care funding in 2004, at about 30 per cent.

Hospital funding is based upon large global budgets that do not account for the amount or quality of work that is done, but are, instead, based on historical spending patterns. It is clear that our health care system still revolves around the notion of hospitals and doctors, despite the fact that today many services can be provided in other settings by a wide variety of health care professionals.

In my opinion, the single-minded focus on hospitals and doctors as the main provider of health care is inefficient and quite costly and is, therefore, unwise. A team-based, multidisciplinary approach to care must be our guide, and the emphasis must be at the primary care and community level — where we can intelligently deal with access, emergency care, home care and public health issues.

The 2003 Health Accord referred to primary care as, “the key to efficient, timely, quality care.” Primary care is ideally available to patients around the clock, and can be tailored to fit a community’s needs based on its location or the make-up of its population. Primary care centres on the diagnosis, treatment and management of chronic conditions, as well as illness prevention and health promotion. It also incorporates community care and home care services, such as support programs after hospitalization.

Primary health care is not a new idea, but it is one that has yet to be supported in our country in the way I believe it should. The facts speak for themselves — there are currently almost three times as many hospitals in Canada as there are primary care clinics or community clinics. Can you believe that? You would think there should be 100 times as many primary care and community clinics as there are hospitals. What has gone wrong?

If we remember the report of the Romanow commission in 2002, primary health care was described as not being a single program that can be rolled out across the health care system. Instead, it is about bringing transformative change to the way in which the system works.

The Romanow commission was of the opinion that no other initiative holds as much promise for improving health and sustaining the system as a whole. The commission also argued that primary health care could save Canada money in terms of our future investment in the health care system, although I must add that it is extremely difficult to quantify what those savings might be.

However, having the most appropriately qualified health care provider deliver a service to patients is bound to be more cost effective. It would also allow doctors to spend more time doing what only they are qualified to do.

Honourable senators, instead of our over-reliance on hospitals, we should place more of our concentration on building up primary care, community care, home care and public health. However, the health accord does not put enough thought into such a plan. In my view, this is a grave oversight, as it is an area on which we desperately need to focus.

The accord states that first ministers will establish a best-practices network to share information and to overcome the barriers to primary health care reform. They also agree to make regular progress reports. These are small steps forward, not the bold and innovative thinking that is required at this time.

Our own Standing Senate Committee on Social Affairs, Science and Technology gave consideration to primary care reform in its 2002 report, which looked into the federal role in health care. The committee identified several barriers to the implementation of primary care reform. These include shortages of qualified personnel, competition between the different professional groups and the absence of an electronic-information infrastructure.

It is believed that electronic health records are crucial to primary care reform. Ideally, they would contain a person’s general information and their health records, including their drug history and the results of laboratory or diagnostic tests. Their development is in an area where the Social Affairs Committee believes the federal government could take a leading role.

On this point, the health accord commits the first ministers to work with Canada Health Infoway to accelerate the development and implementation of electronic health records, including e-prescribing. The goal is to have electronic health records for half of Canadians by 2009 and full coverage by 2020. Canada Health Infoway has received over \$1 billion in federal funding since it was established in 2001, but electronic health records are still not widely used in our country.

The Health Council of Canada released its first report in January 2005. The report’s findings can be summarized in just a few words: We are moving too slowly. It stressed that we must accelerate the use of collaborative health care delivery as the basis of primary health care reform. The health council also emphasized the need to remove regulatory barriers against these multidisciplinary teams and the need to move forward with the electronic patient record.

Again, I return to the 2003 First Ministers’ Accord on Health Care Renewal to make a comparison, as that deal viewed primary care reform as the key to efficient and timely health care. Despite the uniform recognition that Canada must strengthen primary health care, governments have yet to follow through. While there appears to be widespread support among the public, and some positive steps have come from governments, primary care reform has not been significantly advanced by this health accord.

Honourable senators, as I said at the outset, I believe that Bill C-39 must pass, and the funds must flow to the provinces. I will do what I can to see this happens expeditiously. However, we must be careful about our next major investment in health care, as it is clear that we cannot continue along the same path. I look forward to the committee’s review of this bill.

Hon. John G. Bryden: Would the honourable senator take a question?

Senator Keon: I would.

Senator Bryden: This is a bit of a comment as well as a question. I could not agree more with the honourable senator in his analysis that the improvement in our health care system will come at the primary care level and the community level. The statistics relating to the numbers of hospitals in Canada vis-à-vis the number of clinics and team approaches illustrate exactly what the problem is.

One of the problems that my province is facing is that we have roads blocked at the moment in Northern New Brunswick because a community hospital will be turned into a health care centre. This hospital is not the first one and is not likely to be the last one. What may be missing, and perhaps the honourable senator would comment, is that what the hospital means to these communities is far more than health care. Indeed, most of the people who live in the community, if they have a serious health problem, do not go to the local hospital. They go to the regional hospital where they can get full service.

• (1510)

The main concern in these communities is jobs. When you turn a community hospital — with all of its support staff and all of the things that need to be done around a hospital — into a health care centre, the impact on the jobs of ordinary citizens in each of those communities is tremendous.

Has the honourable senator, or anyone else, thought about a transition fund or funding, or a transition task force to help these communities and the people who live in these communities during the transformation into a primary care system that will either give priority to people who work in the hospital, or indeed — and this is a terrible word — provide buy-outs for those people who are in their 50s and early 60s and whose only working life has been as orderlies, and so on, at these hospitals? There is no question that that is the major stopper in rural Canada and small community Canada, in my opinion, to being able to reach the goal that I think everybody wants to reach, including the Government of the Province of New Brunswick. It is difficult to get there.

Senator Keon: I thank the honourable senator for his question. Honourable senators, I assume I will get the same amount of time to respond as it took for the honourable senator to ask his question.

Senator Bryden raised a very important issue. Health restructuring has been done so badly. All of us involved in health care over the years as health professionals, administrators, and so forth have really not delivered in the way that we should have. We allowed this to happen sometimes because we just did not want to go against the grain.

The reality is that various provinces have looked at their hospital structure and, seeing that they had excess hospital beds, vowed to close out the excess capacity. They then made an even bigger bungle, because they closed the cheap little hospitals and dumped their patients into the big hospitals. Thus, as opposed to a hospital bed running at \$200 a day, they put deliveries into a facility that is costing \$1,100 or \$1,200 a day. That has to be an almost idiotic decision.

The real flaw occurred because of the chronic shortage of money. Money comes on a year-to-year basis, and nobody put out the money to build the primary care system before taking the hospitals out. This struck terror in the hearts of the local citizenry, and everybody is protesting about their hospital being closed, because there was nothing available in its place.

The Senate committee tried to deliver the message that some money has to be spent. This money must be for change, not to simply propagate what is already there. It must bring about change. The most important change, in my opinion, is to build community-based primary care that is linked to emergency care, public health, custodial care and the palliative care on which Senator Carstairs has spent so much time and achieved so much. We must collectively continue to harp on that, or we will not go anywhere. That is what I was trying to do today.

Hon. Pierrette Ringuette: The issue of the hospital situation in New Brunswick has prompted me to comment. I remember that 15 years ago the Edmunston Regional Hospital, a brand new hospital, had fewer beds and three administrative persons. We built this new hospital with fewer beds, but with an entire third floor of office space for administration. Two weeks ago, I visited a friend in that new hospital, and I noticed that some construction was going on on the second floor. I asked what was going on and if there was to be some new equipment. The reply was, “No, no, we are removing one bathroom because we need more office space.”

Where do we recognize that the mission of our health care system is to deliver health care and not to deliver administration to the system? You can overburden a system and bypass the object of a system with administration perplexity and complexity and not deliver on your primary mission, which is delivering health care. I seek the guidance of the honourable senator on this matter.

Senator Keon: I thank the honourable senator for her question. I can only agree with what she has said. Again, we have allowed bureaucracy to grow wild. We should never have allowed this, and we must reverse it.

Last summer, Senator Kirby and I gave this matter a great deal of thought, and we put out a provocative paper suggesting that what we need in health care is competition. Unfortunately, somehow this was misconstrued, and people thought we were advocating a public-private system, which we were not doing at all. We simply said, “Within the public system, let us have some competition and bidding, the way we do in other industries.” We would not allow the contracts for our highways, and so forth, to be let without two or three tenders. In health care, we do not need that. We just need a bunch of bureaucrats who decide where the money will go, and it goes in big lumps.

We need to get out of this way of thinking. We need to dedicate ourselves to getting out of it. We must continue to harp on it. The money that is coming forth is needed. We must be really sure that this money changes things forever, and that it does not find its way into these hugely expensive facilities that are bankrupting the system and leaving nothing at the community level.

Hon. Anne C. Cools: Would the honourable senator share more of his vast experience in the health care field and medicine? I was following the last exchange. It may be said that the nature of bureaucracy is that bureaucracy begets bureaucracy. Senator Keon more or less said that we have regrets — “we” meaning the profession, perhaps, collectively — and perhaps should not have allowed the bureaucracy to grow in the way that it has. However, that is the nature of bureaucracy. It is almost as if it wakes up every morning with a bottle of instant bureaucracy and they dip out a teaspoon and stir it into a cup of water and more bureaucrats come out.

I have watched the Senate here become burdened in bureaucracy to the extent that it is difficult for senators to operate and to function, to my mind, properly because of so much bureaucracy. I wonder if, in the work that Senator Kirby and Senator Keon have been doing in their studies — I have not followed it that closely, so perhaps they have already done so — they have studied how to keep bureaucracy under control.

• (1520)

Senator Keon: I do not think we have studied this matter sufficiently, and when I say “we” I mean Senator Kirby and myself. We wrote one paper because the committee could not sit, but other members of the committee are here who make enormous contributions. It is not just the two of us. We will continue as a committee for as long as we can.

We have not given enough thought to this matter; we must give it more. We must start developing a total intolerance for some of the things that are going on. For example, in my own institution, I was told by the bureaucracy that I was not spending enough on administration. I was told that I could not be running the place properly since I was not spending 30 per cent on administration; I was only spending 10 per cent. I said that the reason is that I let the people who are touching the patients run the place. I received a great deal of credit for running a wonderful facility. In fact, it was the people who were touching the patients who made it humanitarian.

We are all obliged to do something about this situation. There is far too much money being spent. Up to 30 per cent of our health spending is going into bureaucracy and it is definitely not needed. We would be better with about half of that.

Hon. Francis William Mahovlich: Honourable senators, years ago I had an operation. How much time does a doctor spend just on paperwork? I know he operates in the morning and cares for his patients, but how much time goes to paperwork in a day?

Senator Keon: It depends on the physician. If you are a junior person on the medical staff, you spend a great deal of time because you must do your own paperwork. If you are blessed to get into a position of authority, then you can hire people to do your paperwork, and you should, since they do it better.

Senator Cools: More bureaucracy.

Senator Keon: That does not mean that you need an excessive number of such people; not at all.

The Hon. the Speaker: Since no further senator is rising to speak, I would ask honourable senators if they are ready for the question.

Some Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[Translation]

DEPARTMENT OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS BILL

THIRD READING—SPEAKER’S RULING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Ferretti Barth, for the third reading of Bill C-6, An Act to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain Acts.

The Hon. the Speaker: Honourable senators, you will recall that on Wednesday, February 23, when Senator Banks moved third reading on Bill C-6 which establishes the Department of Public Safety and Emergency Preparedness, Senator Cools raised a point of order. The purpose of the point of order, as Senator Cools explained, was to claim that Bill C-6 requires Royal Consent.

[English]

According to the senator, there are two basic interrelated reasons why Bill C-6 requires Royal Consent. The first is that the bill deals with matters that involve the prerogative powers of the Crown. The numerous prerogatives that Senator Cools said are affected by this bill involve pardons, mercy and clemency. In support of her position, the senator made reference to several authorities including, specifically, the Letters Patent of 1947 regarding the office of the Governor General of Canada, in particular Article XII and the authority to grant pardons. Associated to this, Senator Cools stated, is the fact that the bill “attempts to alter, jettison or abolish the position of Solicitor General.” If I understand the senator’s position correctly, such an action cannot be done without Royal Consent because the Solicitor General is a law officer of the Crown, and, as such, belongs to the office of the Queen, or the Queen’s representative, the Governor General.

[Translation]

At the outset of her presentation on the point of order, Senator Cools explained that she had waited deliberately until the Senate had come to the third reading stage of Bill C-6, in compliance with previous Speaker's rulings. These rulings acknowledge that, according to established practice, Royal Consent on a C-bill need not be signified until it reaches its final stage in the Senate if it has not been granted in the other place.

[English]

Following Senator Cools' initial intervention, three other senators spoke to the point of order. Senator Rompkey, the Deputy Leader of the Government, argued that the point of order, in not being raised promptly, was now out of place as an objection. More to the point, Senator Rompkey asserted that Bill C-6 does not affect in any way the prerogative, hereditary revenues, personal property or interests of the Crown. As the senator maintained, "This is a change in government departments which we have acknowledged from time to time on both sides of the house is the prerogative of the advisors of Her Majesty."

[Translation]

For his part, Senator Kinsella, the Leader of the Opposition, supported the point of order because, in his view, Bill C-6 affects an office of the Crown. Consequently, in seeking to abolish the office of the Solicitor General, there is a clear need, in the Senator's opinion, to secure Royal Consent.

[English]

The sponsor of the bill, Senator Banks, then spoke to challenge the merits of the point of order. The senator took note of the fact that the position of Solicitor General in Canada is not the same as in the United Kingdom. He also explained that Canada did not always have a Solicitor General. This being so, Senator Banks argued that:

The connection between the majesty of the Crown and the office of the Solicitor General in Canada, which is vastly different from the office of the Solicitor General in the United Kingdom then or now, has not been made. Therefore, there is no point of order.

[Translation]

After Senator Cools made a final statement, I agreed to take the question of the possible requirement for Royal Consent under advisement. In keeping with established practice, I also informed the Senate that debate at third reading of Bill C-6 could continue.

[English]

I wish to express my appreciation to all honourable senators for their participation on this point of order. As Senator Cools stated, the question of Royal Consent has come up several times in recent years. In this particular case, there are two questions to be answered based on the arguments that were made: Are the prerogative powers of the Queen or the Governor General being

affected by this bill? Does the abolition of the Solicitor General as an officer of the Crown require Royal Consent?

[Translation]

In looking to answer these two questions, I will put aside the objection to the point of order that was made with respect to timeliness. While there was nothing to prevent anyone from raising a point of order about Royal Consent earlier, Senator Cools is right in noting that the need to secure Royal Consent for a C-bill that is deemed to require one, if it has not already been obtained in the other place, must be no later than when third reading of the bill is finally put to a vote here in the Senate.

[English]

As Speaker, my role is to rule on points of order, citing the relevant authorities or practice applicable to the case. Most points of order relate directly to the conduct of business in the Senate; such is not the case in matters related to Royal Consent. To determine the merits of this point of order, I have been obliged to look into subject matter that is somewhat beyond the normal purview of the Speaker. To the extent I have been required to do this, I hope to have the Senate's indulgence and understanding.

• (1530)

The first question to be answered deals with the alleged effect of Bill C-6 on the prerogative powers of the Crown. Among the powers identified by Senator Cools are mercy, clemency and pardon. These powers date back in England to medieval times, and to the extent they still exist in Canada, they are part of our constitutional heritage. They are powers invested in the Crown that are exercisable by the Governor General upon the advice, depending on the nature of the offence, of either the Privy Council or at least one minister according to Article XII of the Letters Patent of 1947. I note that no specific reference is made to the Solicitor General in Article XII.

Prerogative powers, despite their long history, need not be forever immutable. They can be abolished or limited by statute. Once these powers have been eliminated or curtailed by law, the powers of the Crown are appropriately restricted. When Parliament seeks to limit or abolish these powers, Royal Consent is required. Through the signification of this consent, the Crown acknowledges that its prerogative powers are being affected by proposed legislation and concedes to Parliament the authority to consider the matter.

I listened closely to the discussion on the point of order on February 23, and I read the *Debates of the Senate* afterwards to better understand the nature of the arguments that were made. I also looked into the substance of Bill C-6, the purpose of which is to establish the Department of Public Safety and Emergency Preparedness. Despite the allegation that the prerogative powers are being affected, I have neither heard nor read anything that supports the claim. There is nothing in the bill to suggest that any of the prerogative powers themselves are in any way restricted or restrained, let alone abolished. There is nothing to lead me as Speaker to believe that Royal Consent is required due to any limitation on the prerogative powers of Article XII being imposed through Bill C-6.

[The Hon. the Speaker]

It may be, however, that the claim regarding the prerogative powers is founded not so much on their direct restriction, but rather through the abolition of the position of the Solicitor General. This is the second question that I identified in the point of order.

The claim being made, as I understand it, is based on the assertion that the Solicitor General is an officer of the Crown. This view is founded largely on the history of the office in the United Kingdom. The position of Solicitor General has existed in England for centuries. In modern times, as was explained, the British Solicitor General functions as a sort of Deputy Attorney General. In the United Kingdom, the position is styled Her Majesty's Solicitor General for England and Wales. In former times, there were several Solicitors General, of which some were actually listed as members of the Royal household, particularly that of the Queen consort, a situation that is still true, as Senator Cools stated, for the holder of an equivalent position in the household of the Prince of Wales.

The history of the Solicitor General in Canada is very different. It is not equivalent in its history to the position in the United Kingdom. Contrary to what was claimed during the point of order, the Solicitor General is not a constitutional office; there is no mention made of a federal level Solicitor General in the Constitution Act, 1867. Indeed, according to the information that I have obtained, the office of the federal Solicitor General was first created by statute in 1887, though not proclaimed in force until 1892. It was not originally a cabinet level position, and it was occasionally left vacant, sometimes for several years at a time. It was not until 1917 that the first Solicitor General was sworn to the Privy Council, and it was not until 1926 that this practice became consistent. For a two-year period in 1950, the duties and functions of the Solicitor General were transferred to the Minister of Justice and Attorney General. In 1966, the old Solicitor General Act was repealed and the new act was adopted creating the Solicitor General of Canada as a ministerial office.

Almost 15 years ago, an attempt was made to restructure the portfolio of Solicitor General into a new public security function. None of these bills or acts presented to Parliament, so far as I have been able to determine, obtained or required the signification of Royal Consent.

Furthermore, having been established by statute law, I see no reason why the abolition of the Solicitor General, or rather the transfer of authority and responsibilities of the old position into the expanded position of the Minister of Public Safety and Emergency Preparedness, by new legislation would require Royal Consent. I have found no evidence to convince me that the objectives of Bill C-6 affect the prerogative interests or personal property of the Crown in any material way so as to require Royal Consent.

Accordingly, it is my ruling that the point of order is not well founded and that there is no requirement for Royal Consent with respect to Bill C-6. Debate at third reading may continue to its conclusion, as there is no impediment to making a decision with respect to the third reading motion.

On motion of Senator Cools, debate adjourned.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET—STUDY OF STATE OF HEALTH CARE SYSTEM—REPORT ADOPTED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on mental health) presented in the Senate on February 24, 2005.—(*Honourable Senator Cook*)

Hon. Wilbert J. Keon: Honourable senators, I move the adoption of this report, standing in the name of Senator Cook.

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

NATIONAL SECURITY AND DEFENCE

BUDGET—STUDY OF NATIONAL SECURITY POLICY— DEBATE ADJOURNED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on National Security and Defence (budget—study on the necessity for a National Security policy) presented in the Senate on February 24, 2005.—(*Honourable Senator Kenny*)

Hon. Joseph A. Day: Honourable senators, Senator Kenny is travelling with the National Security and Defence Committee in Western Canada and, as such, has asked me to move the adoption of this report on his behalf.

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

Hon. Senators: Agreed.

On motion of Senator Tkachuk, debate adjourned.

• (1540)

BUDGET 2005

INQUIRY—DEBATE ADJOURNED

Hon. Noël A. Kinsella (Leader of the Opposition) rose pursuant to notice of February 24, 2005:

That he will call the attention of the Senate to the budget presented by the Minister of Finance in the House of Commons on February 23, 2005.

He said: Honourable senators, I rise to initiate debate on this inquiry that calls the attention of the Senate to the budget presented by the Minister of Finance in the House of Commons on February 23, 2005, and tabled in this chamber on the same day. Before delving into the details of the budget, it might be helpful to consider the nature and function of a budget.

Webster's dictionary offers several definitions of the word "budget," all of which are applicable. First, a budget is defined as a statement of the financial position of an administration for a definite period of time, based on detailed estimates of planned or expected expenditures during the period and proposals for financing them. Second, a budget is defined as a plan for the coordination of resources and expenditures. Third, a budget is defined as the amount of money available, required, or assigned to a particular purpose.

From an accounting perspective, a budget is usually a relatively short-term plan, typically dealing with the next year. The short-term plan results from a decision-making process that chooses among alternative solutions to operating or financial problems within prescribed policy limits. That decision-making process, in turn, comes on the heels of a policy formulation process that establishes the basic ground rules and limits within which decisions are made.

Honourable senators, a budget has several purposes, with the principal one being, in essence, a planning process rather than the more commonly held view that it is a process to establish expenditure limits. The budget process should compel the government to closely review all aspects of its objective, the methods to achieve them and the associated costs. One effect should be that those involved will quantify plans, and test those plans against standards of desirability and feasibility. There is an opportunity to review and anticipate possible changes in the underlying environment that may have a significant impact on the overall plans of the government. A desirable outcome of the budgetary process is that it will aid in the development of a formal statement of both the ends and means, serving as a guideline against which to measure actual performance.

In brief, a budget is the culmination of a decision-making process. A budget may be considered as a quantitative expression of the immediate objectives of the government and the manner in which it plans to finance its operations during the course of the year.

On the website of the Department of Finance, the budget is described as "a blueprint for how the Government wants to set the annual economic agenda for Canada."

Honourable senators, a question that needs to be asked is: How good is this blueprint? If we are working with a blueprint that contains significant errors, clearly the result will likely be unsatisfactory. The current budget has numerous flaws. It is too slow to implement personal income tax cuts, which are minor. It proposes an expenditure of billions of dollars to implement the Kyoto Protocol without addressing real environmental issues. It takes five years to deliver a bureaucratic child care program, while providing no direct assistance to Canadian parents. It does little to assist rural Canada or to assist education. After a decade of neglect, it takes five years to provide additional resources for our military, without any clear plan. This government continues to place billions of public dollars in the hands of private foundations that are beyond the scrutiny of Parliament and the Auditor General.

Honourable senators, Canadians went to the polls eight months ago. During the course of the election campaign, the Prime Minister said that Canada could not afford tax relief and increases in spending for the military. That claim was based on the government's budget, which proved to be incorrect. The money was there. Even worse, the government seemed to be totally unaware of the size of the error, despite the fact that the end of the fiscal year had come and gone. We all understand that the environment can change during the course of one year, which makes accuracy difficult to achieve and more a laudable goal than a probable outcome. The budget is based on forecasts by skilled professionals and is set in stone at the time of release.

However, a competent government should be tracking variances from the forecasts throughout the year. A competent government should be able to provide progressively more reliable predictions as the end of the period draws nearer. The fact that the Prime Minister and the Minister of Finance were not able to do so suggests that there is a systemic problem either in the process or in their approach to keeping Canadians fully informed of the facts.

Since the election, the government has made more than \$55 billion in new commitments. Some of the measures in the budget were those proposed by the Conservative Party — measures previously resisted by the government. For example, Conservatives have long argued for tax relief for low- and middle-income Canadians. This budget has finally taken some timid steps in that direction. Reduced corporate taxes help to stimulate the economy, create jobs and, ultimately, raise government revenue. This budget has recognized, at last, the validity of this policy, which was advocated by the Conservative Party of Canada.

The inadequacy of defence spending has been at the forefront of Canadian concerns, and the Conservative Party of Canada is a chief advocate for additional money for our Canadian Armed Forces. At least this budget has begun to address this continuing problem. Other measures contained in the budget, including the tax credit for adoption expenses and the elimination of the excise tax on jewellery, came directly from initiatives undertaken by Conservatives. The platform of the Conservative Party of Canada included improvements to the caregiver tax credit that is now found in this budget. Removal of the Canadian Agricultural Income Stabilization cash deposit requirement, the subject of a Conservative supply debate and a defeated motion in the other place, is now found in this budget.

• (1550)

Honourable senators, unfortunately, many of the steps taken by the Minister of Finance do not go far enough or fast enough to have a substantial impact on the well-being of Canadians. There has been a lengthy delay to the future of substantial tax relief for business: tax relief that will grow the economy, create jobs and enhance government revenues to, in turn, help fund higher priority programs.

Turning to the topic of taxes, on budget day Canadians opened their morning papers to the news that later that day the Minister of Finance was going to cut their taxes by raising the basic

personal exemption to \$10,000. That issue has been the subject matter of questions in this house, and it behooves us to ask questions, for how that news left the secure confines of the Department of Finance is a matter that does not appear to have excited any interest in government circles, although it is a matter of serious concern that I will address later.

Despite the grand sound of the measure, a closer look at the fine print reveals that an individual's taxes will drop next year by the princely sum of \$16. Four years from now, the tax break will amount to \$192. This is still not a king's ransom, but for many low-income Canadians it will be helpful, provided that the entire amount is not taken from their pockets by other means.

Even with this tax reduction, the government expects that in the year 2009 it will collect 35 per cent more in personal income taxes than it did last year. Revenues from personal income taxes continue to rise faster than any other revenue category. This continuing increase in a time of surpluses does not reflect well on the government. The budget does not change the fact that the highest marginal tax rates are faced not by the wealthy but by low- and modest-income families with children. Add together federal taxes, provincial taxes, EI, CPP, the clawback on the GST credit, the clawback on the Canada Child Tax Benefit, the clawback on the National Child Benefit and, in some provinces, other income-tested benefits, and you have the equivalent of marginal taxes in excess of 60 per cent. For some larger families, the marginal tax rate will be in excess of 80 per cent.

Honourable senators, the budget also announced a change in the way EI premiums are set. In the future, rates will be set to cover the cost of the program, with a limit on the size of a year-to-year change to help ensure that the rates are stable and predictable. Expert advice will be taken into account. In other words, the budget proposes to establish a system much like the one that was previously thrown out by the government to enable it to set the rates at an artificially high level.

Honourable senators, over the past eight years, the government has built up a \$48 billion surplus in the Employment Insurance Account. Because the money was being spent as fast as it came in, those who argued that the surplus would help the premiums from rising during the recession were wrong.

Giving authority to set the rates to the EI commission should mean that Canadians will enjoy a reprieve from the practice of using EI premiums as just another tax. The budget does not address the EI account itself, and the paper surplus that it contains. That surplus will play no role in rate-setting decisions. In other words, the surplus is effectively an interest-free loan to the government from Canadian workers. There is no acknowledgment in the budget that the EI surplus was built under a false pretext.

I will now turn to child care. The budget commits the federal government to providing \$5 billion over five years to the provinces and territories in support of an early learning and child care initiative. However, there does not appear to be a finished plan to support this allocation. Five billion dollars surely is a considerable amount of money to confer without a clear articulation of the objectives of the initiative. It is a matter of

considerable concern that huge sums of money are being set aside without anything resembling a clear purpose or focus. It appears that this money will not benefit the more traditional family arrangements for child care. Families with one parent staying home to care for the children will be helping to pay for those who make other arrangements. A more workable national child care proposal might offer families direct assistance from tax breaks rather than offering unpalatable alternatives.

Let us speak for a moment about the standard of living enjoyed by Canadians. This budget devotes an entire chapter to an analysis of the current demographic state of Canada. Regrettably, not enough is done to enhance productivity in this budget. Our neighbours to the south have been chalking up gains in productivity while Canada has been losing ground.

Honourable senators, we are all well aware of the serious realities of the current demographics of our country. The crunch is coming. We can see it clearly in the numbers. It is completely predictable and almost completely unavoidable. If high-priority social programs are to be available to Canadians when they require them, greater attention must be paid to growing our standard of living, and this means that government at all levels must encourage investment in Canada's productive capacity. Taxes must be brought down. The regulatory environment must be streamlined. We need to reduce the national debt more rapidly, and education and training must be actively encouraged.

When reality is compared to need, reality shows that the past three years have seen the value of R&D performed by Canadian business declining from a peak of \$13.8 billion in the year 2001 to \$12.5 billion last year.

The subject of post-secondary education received only nominal attention in the budget speech. The Minister of Finance stated:

Reducing debt, in a reasonable and measured way, relieves a big burden on future generations.

In the last decade and a half, university tuition has climbed dramatically, and the statistics have been well documented and widely reported. The average undergraduate science and arts student pays nearly \$5,000 in tuition alone, and an individual in a professional program has an average tuition cost of over \$12,000. There is clearly an increasingly overwhelming burden being shouldered by Canadian post-secondary students, and the statistics suggest that, unless real leadership is demonstrated by the federal and provincial governments, costs will continue to soar.

The budget also paid little attention to the need for research and innovation. If Canada is to be in the vanguard of innovation, a significant investment of resources in this important area is required. Sustaining the status quo is not sufficient. This issue should have received much greater attention than it did.

• (1600)

Recommendations put forward by the Canadian Alliance of Student Associations suggest a clear path for improvement, but it must be understood that these are only measures to help alleviate problems in the short term. We must re-analyze how we deliver post-secondary education in this country.

Re-analyzing how we deliver post-secondary education means looking at the best practices of other countries. For example, Ireland's experience in the last decade is an interesting — indeed, instructive — success story, a story in linking access to post-secondary education to a healthier economy and, as a result, a higher standard of living. Canada can study models such as the Irish one and learn from its experience, as well as that of other nations. Doing so will require the cooperation of both levels of government, and both levels must be willing to explore new options with a sense of open-mindedness.

Turning to the matter of defence, honourable senators, after years of neglect the budget has announced new funding for the Armed Forces. However, there are two big problems with the announcement in the budget. First, there is a significant element of back-end loading, meaning that much of the money promised will not actually arrive until four or five years from now. Second, while the budget trumpeted the amount as \$12.7 billion, much of it had already been announced.

Last week, our own Standing Senate Committee on National Security and Defence held public hearings in Western Canada. On February 28, in Vancouver, former Vice-Admiral Chuck Thomas, Chief of Defence Staff, told our committee:

The new budget that just came down is a day late and many dollars short... The consequence is that we are going to send our children and our grandchildren to ugly places in the world where the bad guys have better guns. We are going to put them at risk, and they are going to come home in body bags. It is not right.

At the same meeting, retired Major-General Brian Vernon stated:

In hockey terms, we have a hockey team that has two forwards, one defenceman, a goalie who cannot skate, a coach that is on stress leave and a bus that is broken down.

Honourable senators, it would appear that this government does not have a plan for defence, and we are given no indication as to how a considerable portion of the new money will be used.

Returning briefly to my opening comments, wherein a budget was described as the end of a planning process and as a blueprint for the annual economic agenda, it is curious that so much of the money in this budget is being set aside apparently without much in the way of a finished plan.

Honourable senators, on the topic of the environment, a centrepiece of the 2005 budget's environmental announcements was greenhouse gas abatement measures. There were, of course, also spending announcements on a range of other environmental issues, including invasive species, fisheries, our waterways and oceans, the Canadian Environmental Protection Act and national parks.

Whether the resources allocated will be sufficient to accomplish the stated purposes remains to be seen, but if the budget process is working properly, there is reason to be hopeful. In this context, it should be noted that Canada has been criticized for its record on

the environment by authorities as diverse as the federal Commissioner of the Environment and Sustainable Development and the OECD. Much clearly remains to be done in all of these areas.

It is in the principal area of focus, namely, greenhouse gas abatement measures, that the government appears to be struggling the most. The whole issue of global warming seems to be one that has not been properly managed during the course of the budget process.

Let us recall that on April 29, 2003, our Prime Minister-to-be said in a Toronto town hall meeting:

I think if you're going to bring in something like Kyoto, which is going to provide a huge national cooperation, you owe it to Canadians to lay the plan in front of them, so Canadians know what is being asked of them. Unfortunately, we ratified Kyoto without that plan in place, and since then we have not heard a great deal about the plan.

Mr. Martin was laying it out clearly in that speech in Toronto. It is clear that, without a plan, it is pretty difficult to move forward in a rational manner.

Unfortunately, it would appear that Canada is still operating without a firm, substantive plan. Canadians do not yet know what will be asked of them. Canadian businesses still do not have certainty about the government's plans to enable them, in turn, to effectively plan for the future.

Efforts to date to get buy-in from the Canadian public has been less than successful, despite the fact that polls consistently show that Canadians view global warming with concern and think that something should be done. There is a similar problem with other levels of government, which have also indicated that they want to be part of the solution.

Aside from the specifics of the greenhouse gas abatement measures mentioned in the budget and the revised Kyoto plan, a number of things should be clear as we move forward. First, Canada desperately needs to take a leadership role in developing technologies and mechanisms that encourage and reward Canadians and Canadian industry for taking action to reduce greenhouse gas output.

Second, our resources should be directed at developing made-in-Canada solutions and technologies that provide benefits right here in Canada. The practices and technologies could then be exported to other countries to help them with their greenhouse gas challenges.

Third, good government policy can spur innovation and, in the process, create new economic opportunities. We must ensure that Canadians take full advantage of these opportunities by creating an innovative regime of programs, strategic investments and tax incentives.

Fourth, many of the most cost-effective investments for reducing greenhouse gases are also based on technologies that increase energy efficiencies. Investments in

these technologies can enhance energy efficiency, yield climate change benefits and provide cost benefits to consumers and industry.

Fifth, all of our efforts in climate change must be done in meaningful cooperation with stakeholders and other levels of government. On this point, the government's record has unfortunately been weak. For instance, the 2002 climate change plan for Canada was met with complaints about lack of input by Parliament, stakeholders and other levels of government. Also, in the 2002 debate over motions about Canada's ratification of Kyoto, government members in the other place — and, indeed, some senators in this place — rejected amendments aimed at having a greater degree of federal-provincial agreement on an implementation plan.

Finally, any measures or programs aimed at greenhouse gas abatement need effective execution, review and follow-up with a view to ensuring that they achieve their stated goals on an ongoing basis. Whether or not this government's greenhouse gas abatement measures, as announced in the budget and discussed in Minister Dion's revised Kyoto plan, meet the six objectives I have outlined, only time will tell.

• (1610)

One thing is certain, honourable senators. The past performance of this government on this issue does not give Canadians cause to be optimistic. Indeed, for the environment as a whole, this government's overall record of failing to match performance with promises is a worrying trend.

Turning to the matter of agriculture, honourable senators, this budget was particularly deficient when it comes to agricultural matters. Farmers, as we know, are facing extremely difficult times and the reports in the media reflect the severity of the problem. Statistics Canada recently reported that net farm income bottomed out in 2003 at the lowest level since 1978.

A list of some of the challenges include: the continuing BSE crisis, plummeting commodity prices, high input costs, increases in industrial milk prices, the avian influenza and a cool, wet harvest season with an early frost on the Prairies.

In Ontario, Quebec and other parts of Canada, it seems that not a week goes by without protests by farmers and farm groups as they struggle to bring attention to their plight. It is these kinds of circumstances and situations which bring into focus the magnitude of the difficulties that the agricultural sector faces.

As this is not the first such year, budget planning should have had this sector clearly in mind, and significant initiatives to help rebuild the agricultural industry in Canada might have been expected. However, just as in the October Speech from the Throne, the budget announced next to nothing in terms of substantive measures for Canada's agricultural sector. No major overhaul of the increasingly dysfunctional Canadian Agricultural Income Stabilization program, CAIS, was announced. Producers hard hit by drought, crashing commodity prices and the tragic BSE crisis have been asking for tax deferrals on 2004 income. I did not see any such measure in this budget.

Nowhere in the budget is there any mention of tax incentives to increase domestic cattle and other ruminants' slaughter capacity for producers who have taken such a pummeling from the BSE crisis. The federal government continues to refuse to consider a federal cull program while the number of animals in Canadian herds continues to grow, and domestic slaughter capacity remains insufficient. If the budget represents the culmination of a decision-making process, it appears that the process itself has failed with regard to many agricultural issues, particularly for the cattle industry.

Honourable senators, in closing, I wish to touch upon the matter of budget secrecy to which I alluded. Budget secrecy, honourable senators, is a keystone of our parliamentary tradition. Details of a budget can affect the financial markets, and knowledge of some of the specifics has been shown to provide individuals with an unfair advantage. Budgets are kept secret until they are tabled. We know that in the past many a minister or government has fallen when budget secrecy was breached.

Furthermore, budgets are released after the markets have closed. The time of delivery of the budget speech is not an accident. Generally, budget speeches are given after markets are closed so that those with direct and immediate access to the markets do not have an unfair advantage over those who do not have such access.

Thus, it came as a surprise that on budget day, and in the days leading up to the budget, there was no shortage of reports as to what the Minister of Finance would be revealing to the nation at 4 p.m. on Wednesday, February 23. My colleague, Senator Tkachuk, pointed to the uncanny accuracy of an article that appeared in the *National Post* on budget day under the by line of Anne Dawson, who was able to tell her readers about several budget measures including child care, the cut in corporate taxes, the increase in the Guaranteed Income Supplement, the payment schedule for the national child care program and the reduction in the Air Travellers Security Charge.

Ms. Dawson seems to have secured more details than many others, but the news also leaked out to other papers. *The Globe and Mail* highlighted the minister's claim that raising the basic personal amount to \$10,000 would take many Canadians off the tax rolls. While the *Vancouver Sun* had many of the same details reported by other papers, it had the additional news that the budget would announce \$50 million for the Asia Pacific Foundation of Canada.

Honourable senators, there was a time when budget secrecy was treated as a serious matter. If there were leaks of the magnitude we saw last month, the minister would be expected to resign.

No one ought to be able to profit based on advance knowledge of what is in a budget. Even the smallest detail can make someone a lot of money, all at the expense of others. The advance knowledge that corporate tax rates will drop by 2 percentage points is more than a small detail. It is the kind of information that can move financial markets. Whoever passed that information on to Ms. Dawson was acting irresponsibly and was almost certainly in violation of an oath of office. It is a serious matter that needs to be taken seriously.

Honourable senators, the budget is supposed to reflect the plans of the government. What we see in this budget is little more than a plan to raise tax revenue and spend it as quickly as it comes in. What this country really needs is a budget plan that shows leadership, a plan that answers basic questions as to how the government will deliver measures such as a national child care system, a more productive economy, solutions to climate change and the path to rebuilding our military. This budget does not show that leadership.

In conclusion, honourable senators, even though this is not a house of confidence and our decision on the budget would not have the impact that it has in the other place, I think it is clear that this budget cannot be supported, and that we will be raising many objections to items that are in the budget. On the other hand, we recognize that if we were a house of confidence, and if we were to reject the budget, it could very well precipitate an election, which would cause Canadians to spend in excess of \$300 million.

The leader of the Conservative Party of Canada has indicated that he could not see that the people of Canada were looking for an election, and that although there had been some movement in the direction of some of the policies we had articulated in the budget, this is why he has taken the public stand that he has, which I support.

Some Hon. Senators: Hear, hear!

On motion of Senator Stratton, for Senator Cochrane, debate adjourned.

• (1620)

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

Leave having been given to revert to Senate Public Bills:

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Losier-Cool, for the second reading of Bill S-21, to amend the Criminal Code (protection of children).—(*Honourable Senator Cools*)

Hon. John G. Bryden: Honourable senators, I apologize for my absence. I had stepped out, and the orders moved forward rather quickly. Thank you for permitting me to speak.

Honourable senators, I rise in support of the Honourable Senator Hervieux-Payette's proposed amendments to the Criminal Code that would abolish section 43 of that code. Section 43 states:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

This is the so-called "spanking" defence, which was upheld a year ago by the Supreme Court of Canada in a 6-3 decision.

Honourable senators, the Supreme Court was asked to decide whether section 43 infringed children's rights, contrary to the Charter of Rights and Freedoms. The majority of the court held that it does not. Chief Justice McLachlin noted that:

Section 43 permits conduct toward children that would be criminal in the case of adult victims.

However, she found that Parliament's choice in not criminalizing this conduct toward children did not offend against the Charter.

Honourable senators, the fact that something is not in violation of the Charter does not mean that it is good public policy. I believe it is time that we repeal this section and, as a nation, that we begin to put a stop to corporal punishment.

This is a highly emotional issue for many. Questions of family discipline — how one should raise one's children — are extraordinarily personal. The state, quite properly, treads very carefully when entering the realm of the family. At the same time, we have a particular duty to protect those most vulnerable in our society.

As Chief Justice McLachlin observed:

Children are a highly vulnerable group... Children need to be protected from abusive treatment. They are vulnerable members of Canadian society and Parliament and the Executive act admirably when they shield children from psychological and physical harm.

That comes from the case: *Canadian Foundation for Children, Youth and Law v. Attorney General in the Right of Canada* [2004] 1 S.C.R., 76, pages 56 to 58. That is the last citation I will give you, as most of the quotes come from there.

Chief Justice McLachlin went on to say:

Children also depend on parents and teachers for guidance and discipline, to protect them from harm and to promote their healthy development within society. A stable and secure family and school setting is essential to this growth process. Section 43 is Parliament's attempt to accommodate both these needs.

Honourable senators, I agree absolutely with the Chief Justice's summary of children's needs. However, I am convinced that, as a society, we can better accommodate these needs than by condoning violence toward our children.

Corporal punishment has a long history. Senator Hervieux-Payette discussed its roots in Roman law, but we need not go back that far. Section 43 became law in 1892. It grew out of the English common

law that permitted corporal punishment of wives, employees, apprentices, passengers on ships, prisoners and children. Honourable senators, let us not forget that those punishments were once considered appropriate. They were considered appropriate, measured responses to the need to discipline, and thereby educate wives, employees, apprentices and children.

Let me read to you from an article in the British *Observer* of Sunday, May 4, 2003:

Britain's class system was often used to legitimise corporal punishment. In 1795, a London court heard the Lord Chief Justice explain that a master not only had a duty to cane his servants, but also to ensure the beatings were severe.

Boys of all backgrounds were liable to "bare-bottom discipline", as soon as they joined the navy before the practice was abolished in 1967. They were forced to pull down their trousers before being flogged with the cat-o'-nine-tails, a whip, usually made of cow or horse hide, with nine knotted lines for inflicting increased pain.

The law changed with respect to wives, employees, apprentices, passengers on ships and prisoners. The one remaining anachronism relates to the appropriate education and discipline of children.

Honourable senators, the argument made for corporal punishment of children is that it is a corrective force. As Chief Justice McLachlin explained it:

First, the person applying the force must have intended it to be for educative or corrective purposes. Accordingly, s.43 cannot exculpate bursts of violence against a child motivated by anger or animated by frustration. It admits into its sphere of immunity only sober, reasoned uses of force that address the actual behaviour of the child and are designed to restrain, control or express some symbolic disapproval of his or her behaviour. The purpose of the force must always be the education or discipline of the child.

Honourable senators, where else in Canadian society do we actively condone the use of violence as an educative tool, especially against one who is weaker and more vulnerable? In general, we have come to understand that the impact of violence is much more profound than was previously believed.

As I mentioned, force used to be an accepted alternative to correct behaviour of a wife. Now we understand the terrible impact of spousal assault; on the spouse and also on the children who witness it.

Chief Justice McLachlin herself acknowledged that there are limits to the corrective scope of force against children. She drew the limits at children between the ages of two and 10 years. She said:

Corporal punishment of children under two years is harmful to them, and has no corrective value, given the cognitive limitations of children under two years of age. Corporal punishment of teenagers is harmful, because it can induce aggressive or anti-social behaviour.

Honourable senators, I am a father of three and a grandfather of eight. It does not make sense to me that hitting a child of 12 would be good for them and an educative tool in proper behaviour, and yet when that same child becomes 13, the same action is known to induce aggressive or anti-social behaviour. I served as Deputy Minister of Justice in New Brunswick. In that capacity, I dealt with criminal law matters on a far too regular basis. In my experience, violence begets anger, resentment, humiliation and, indeed, violence.

• (1630)

In her excellent speech of December 7, 2004, Senator Hervieux-Payette cited an October 25, 2004 report by Statistics Canada that found that children aged two to three years who were living in punitive environments in 1994 scored 39 per cent higher on a scale of aggressive behaviour, such as bullying, than those who lived in less punitive environments. The same children were examined again six years later, in 2000. Now eight and nine years old, these same children who lived in punitive homes scored 89 per cent higher on the aggressive behaviour scale than those in less punitive homes.

Statistics Canada very recently, indeed on February 21, 2005 — some of you may have seen some of it in the press — published a further follow-up to this study. Looking at the same children two years later, the study also found:

Children showed higher levels of aggressive behaviour when their parents were more punitive. They also showed higher levels of anxiety and lower levels of pro-social behaviour, the latter defined as actions that benefit another person with no reward for one oneself. The link between punitive parenting practices and child behaviour was found when children were aged 2 to 5 in 1994/95 and eight years later in 2002/03, when they were aged 10 to 13.

That is the National Longitudinal Survey of Children and Youth.

To clarify, "punitive parenting" was measured by asking participants how often they used physical punishment, or yelled at the child and, on the other hand, how often they calmly discussed the problem or described more acceptable behaviour to the child. Children aged 10 to 13 were asked how often their parents yelled at them, hit them or threatened to do so.

I recognize there is fear that parents will wrongly find themselves accused of criminal acts. I would quote from the dissenting decision of Madam Justice Louise Arbour, who said that section 43 violates the constitutional rights of children to safety and security and must be struck down. She said:

Absent action by Parliament, other existing common law defences, such as the defence of necessity and the "*de minimis*" defence, will suffice to ensure that parents and teachers are not branded as criminals for their trivial use of force to restrain children when appropriate.

Honourable senators, today we know there are many alternatives to the use of force as a corrective tool for children's behaviour. In April 2003, a coalition of national organizations led by the Children's Hospital of Eastern Ontario, and including the Child Welfare League of Canada, Family Service Canada, Canadian Child Care Federation, Canadian Institute of Child Health, Canadian Public Health Association and Canadian Association for Young Children issued a Joint Statement on Physical Punishment of Children and Youth. They said:

The research evidence now available permits us to move beyond the debate about whether physical punishment is harmful to children and youth or is even effective as discipline.

Few parents believe that physical punishment is effective, most believe it is unnecessary and harmful, and a majority think the most common outcome is parental guilt or regret.

There is strong evidence that physical punishment places children at risk for physical injury, poorer mental health, impaired relationships with parents, weaker internalization of moral values, antisocial behaviour, poorer adult adjustment, and tolerance of violence in adulthood.

There is no clear evidence of any benefit from the use of physical punishment on children.

Parents are more likely to use physical punishment if they approve of it, experienced it themselves as children, feel anger in response to their child's behaviour, are subject to depression, or are burdened by particular forms of stress.

Their conclusion was:

On the basis of the clear and compelling evidence — that the physical punishment of children and youth plays no useful role in their upbringing and poses only risks to their development — parents should be strongly encouraged to develop alternative and positive approaches to discipline.

The 50-page paper does not simply condemn the use of hitting or spanking as a corrective tool; it also sets out positive alternatives that may be used by parents and teachers.

Honourable senators, I must tell you that while this is an issue that I have felt strongly about for some years, I was moved to enter the debate on Senator Hervieux-Payette's bill when reading the March 2005 issue of *Harper's Magazine*, page 28. There, in a side-bar, appeared the following, under the headline "The Other Cheek." Before I read the rest, I should indicate that it came —

From an advertisement for The Rod that appeared in the magazine *Home School Digest*. In December the Consumer Product Safety Commission rejected a bid to ban the sale of The Rod, having found "no basis for determining that the product constitutes a substantial product hazard."

This is the advertisement:

Why a rod for training?

The means prescribed by God: "Withhold not correction from a child: for if thou beatest him with a rod, he shall not die. Thou shalt beat him with the rod, and shalt deliver his soul from hell. (Proverbs, 23:13-14)

Belts are for holding up pants.
Spoons are for cooking and eating.
Paddleball paddles are for games.
Hands are for loving.
Rods are for chastening.

INSTRUCTIONS:

Try the rod out on yourself ahead of time to determine how much force you should use to get the result you require.

Chasten on a clothed buttock with the appropriate number of swats. Three or four swats is suggested.

Console the child afterwards and affirm your love for him. This will give you an opportunity to "check his heart" and show the child that chastening is a form of love.

FEATURES: —

The Hon. the Speaker: Senator Bryden, I am sorry to interrupt, but I must advise that your time has expired.

Senator Bryden: I am asking for leave.

Hon. Senators: Agreed.

Senator Bryden: Features of the rod:

Flexible Nylon Rod

More effective results
Less likely to break
More precise control during application
Cushioned Vinyl Grip
Non-slip during training
Durable for years of use

BENEFITS FOR THE CHILDREN:

Promotes a loving atmosphere in the home
Removes guilt and foolishness from their hearts
Develops self-control
Helps children to receive wisdom

BENEFITS FOR THE PARENTS:

Lightweight yet durable
Balanced and easy to use
Ideal for car or home
Allows for better parent/child relationship
Results in a more peaceful home
An excellent gift idea

Does that make you sick, or what?

• (1640)

Honourable senators, I applaud Senator Hervieux-Payette's initiative in seeking to repeal section 43. There are better ways to discipline our children. There are better lessons to teach them than to learn to respond with force.

Hon. Senators: Hear, hear!

Hon. Terry Stratton (Deputy Leader of the Opposition): I would like to adjourn the debate in the name of Senator Cools, who has informed us that she shall speak on Thursday.

The Hon. the Speaker: Before I put the motion, did you want to ask a question, Senator Trenholme Counsell?

Hon. Marilyn Trenholme Counsell: Yes, I did. May I?

Senator Bryden: Oh, yes, certainly.

Senator Trenholme Counsell: Honourable senators, as Senator Bryden read that last horrifying advertisement, a chill went through all of our bones, our blood and especially our hearts, but I have been struggling with my own response to the bill.

I think I know where I stand, but when I heard him read that advertisement, I wondered if the use of such a rod, if reported and acted upon, would conform to section 43? I do not think that the spirit of the law, as it exists now, would allow the use of that rod. The honourable senator is an esteemed lawyer, and we should have that point clarified by someone with his knowledge of the law, and of section 43.

It seems to me that the use of that instrument of discipline would contravene the law, and would make any person using that instrument, be it a parent or a teacher, vulnerable to criminal charges.

Senator Bryden: I should make it clear that that advertisement came out of a U.S. publication, *Harper's Magazine*, and that it was lifted from the home schooling magazine.

I do not know the answer to the honourable senator's question, if we had a case under section 43. Is a wooden spoon better than the rod? Is it better to hit with your hand? There was a time — the senator accuses me of being a lawyer, so I will accuse her of being a medical doctor — when I heard grandparents suggest to parents, "Do not hit him. Just shake him a little bit." You all know what happens to a child's brain when you shake him or her a little bit? We have now found that huge amounts of damage, and even death, occur from that.

I think it would be a technical fight; it will depend on the interpretation by the courts of whether this is a corrective action or whether only reasonable force was used. I do not think there is any way that even someone as thoughtful as Chief Justice McLachlin can decide that if you are not quite two years old, then it is not okay to be hit, but if you are two-and-a-half, then it is. This is a fundamental anachronism that is stuck in the Criminal Code.

It is interesting that the study from which I quoted that recommended that no force be used, which did not deal with any specific section of the code, elicited many interventions opposing the position that we stop using force, and many of those interventions were based on such things as the proverb I read.

I do not know any way to deal with this matter other than to repeal the section. I do not quarrel at all with the Chief Justice and with the majority of the court's decision that this does not violate the Canadian Charter of Rights and Freedoms if it is precisely applied. However, this is an invitation to Parliament saying "Pick up your responsibility here, folks. It is your decision, your call. If you want people to have the option, the opportunity to use force in dealing with young children, then let this continue." There is no question that the Parliament of Canada has the right and the ability to deal with this matter, has absolutely the right to repeal this section of the Criminal Code, and that it would not be questioned at all by the courts.

I was trying to think of the quote about the sort of person who hits a child. After getting somebody to do a search, the person I was thinking of was George Bernard Shaw, and this was his quote:

If you strike a child, take care that you strike it in anger, even at the risk of maiming it for life. A blow in cold blood neither can nor should be forgiven.

What he is really saying there is that if you strike a child when you are angry, you are a brute. If you strike them when you are not, are you a sadist?

I do not want to go on much longer — in fact, I will stop now. This question has been approached from various angles by various people. We are in the 21st century, for goodness sake; let us prevent the legalized violation of the personal security of people who are among the most vulnerable in our society.

Hon. Senators: Hear, hear!

On motion of Senator Stratton, for Senator Cools, debate adjourned.

The Senate adjourned until Wednesday, March 9, 2005, at 1:30 p.m.

CONTENTS

Tuesday, March 8, 2005

	PAGE		PAGE
Visitors in the Gallery		Missile Defence Program—Effect of Non-Participation on Business Community.	
The Hon. the Speaker	841	Hon. Gerry St. Germain	845
		Hon. Jack Austin	845
		Hon. Marcel Prud'homme	846
<hr/>		Privy Council Office	
SENATORS' STATEMENTS		Ethics of Government Appointee Glen Murray Attending Liberal Party Convention.	
Royal Canadian Mounted Police		Hon. Terry Stratton	846
Tribute to Slain Constables.		Hon. Jack Austin	846
Hon. Joyce Fairbairn	841	The Senate	
Citizenship and Immigration		Appointment of Women to Fill Current Vacancies.	
Deportation of Mr. Ernst Zundel.		Hon. Marcel Prud'homme	847
Hon. David Tkachuk	841	Hon. Jack Austin	847
International Women's Day		Pages Exchange Program with House of Commons	
Hon. Lucie Pépin	842	The Hon. the Speaker	847
Canadian Diabetes Association			
Hon. Marilyn Trenholme Counsell	842	<hr/>	
International Women's Week		ORDERS OF THE DAY	
Hon. Elizabeth Hubley	843	Business of the Senate	
		Hon. Bill Rompkey	847
<hr/>		Statistics Act (Bill S-18)	
ROUTINE PROCEEDINGS		Bill to Amend—Third Reading—Debate Adjourned.	
Canada-Mexico Inter-Parliamentary Meeting		Hon. Bill Rompkey	847
Thirteenth Annual Conclave, January 24-27, 2005—Report Tabled.		Federal-Provincial Fiscal Arrangements Act (Bill C-39)	
Hon. Daniel Hays	843	Bill to Amend—Second Reading.	
Federal-Provincial Fiscal Arrangements Act (Bill C-24)		Hon. Wilbert J. Keon	848
Bill to Amend—Report of Committee.		Hon. John G. Bryden	849
Hon. Donald H. Oliver	843	Hon. Pierrette Ringuette	850
		Hon. Anne C. Cools	851
		Hon. Francis William Mahovlich	851
		Referred to Committee	851
<hr/>		Department of Public Safety and Emergency Preparedness Bill (Bill C-6)	
QUESTION PERIOD		Third Reading—Speaker's Ruling—Debate Continued.	
Health		The Hon. the Speaker	851
Availability of Heart Medication Inderal LA.		Social Affairs, Science and Technology	
Hon. Wilbert J. Keon	843	Budget—Study of State of Health Care System—Report Adopted.	
Hon. Jack Austin	844	Hon. Wilbert J. Keon	853
Agriculture and Agri-Food		National Security and Defence	
Bovine Spongiform Encephalopathy—Aid to Cattle Industry.		Budget—Study of National Security Policy—Debate Adjourned.	
Hon. Donald H. Oliver	844	Hon. Joseph A. Day	853
Hon. Jack Austin	844	Budget 2005	
Hon. Gerry St. Germain	844	Inquiry—Debate Adjourned.	
Canada-United States Relations		Hon. Noël A. Kinsella	853
Missile Defence Program—Linkage of Non-Participation to Other Issues.		Criminal Code (Bill S-21)	
Hon. Gerry St. Germain	845	Bill to Amend—Second Reading—Debate Continued.	
Hon. Jack Austin	845	Hon. John G. Bryden	858
		Hon. Terry Stratton	861
		Hon. Marilyn Trenholme Counsell	861



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